

Important Questions Regarding the Interface Between Article 1 and 2

- Who are the Iwi?
- Who does the Crown consult with?
- What rights does each have under the Treaty?
- Whose rights are protected?

To date the Crown and Iwi have not addressed the identified questions.

Treaty and Conservation

The Crown and Iwi need to develop management responsibilities in conservation to recognise the overlap/partnership zone of Article 1 and 2 responsibilities and duties.

Legislation and the Treaty

Iwi should be very concerned at the trend towards dropping Treaty provisions in legislation. Through the exclusion of the Treaty clause the Government forces the Iwi to consider separate development with all of its difficulties.

Comment

This was a session that resulted in a greater level of understanding about the political nuances of the Treaty Partnership including its current status within contemporary cultural/political systems. The session ran with the session on consultation; the areas of overlap are extrapolated in the record of that session.

The session achieved its aim through broadening the participants understanding and viewpoint on the Treaty and the difficulties encountered by Crown and Iwi to reach effective models of partnership.

The considered role of the Maori Board members' (in matters that come before them) is to question whether in their view the attempt by the Department to achieve partnership is adequate, genuine and within the spirit of the Treaty provisions.

"The process of consultation should recognise Maori methods of consultation. Explanation, examination and discussion of issues will much more likely lead to an informed and adaptable decision. There must be a greater effort to take proposals to people on the marae."

[Ngai Tahu Report - Waitangi Tribunal.]

Introduction

This session aimed to explore current perspectives on consultation with tangata whenua in Board management. The Kaupapa embraced wider concerns involving gauging the extent of dialogue between Iwi Maori and conservation organisations and emerging perspectives on international issues.

Summary of Presentation and Discussion

The New Zealand Maori Council case to the Court of Appeal in 1987 moved the Court to consider and explore the principles of the Treaty, particularly the principle of partnership. The Court considered one of the constituents of partnership as the "duty of consultation".

In a recent High Court decision by Justice McGechan the Court defined the process of consultation (within a non-Treaty framework) providing a new legal basis to progress consultation.

In part, the definition stated:

'the essence of consultation is the communication of a genuine invitation to give advice and a genuine consideration of that advice .../.. to achieve consultation, sufficient information must be supplied by the consulting to the consulted party to enable it to tender helpful advice. Sufficient time must be given by the consulting to the consulted to enable it to do that ...'

The judge considered consultation to be an intermediate situation involving meaningful discussion, whereby:

'the party obliged to consult, while entitled to have a working plan already in mind, must keep its mind open and be ready to start afresh.'

Both Hui accepted that the Crown needs to state its position clearly as to what it perceives consultation to be. Both Hui agreed the basis of consultation is the Treaty relationship between Iwi and the Crown. Confusingly at times the Crown represents itself in different forums with conflicting messages.

Boards Role

Advice was tendered to the effect that Boards should prepare a range of standard questions to gauge whether the consultation practice is adequate in light of Iwi concerns.

4.0 INTRODUCTION TO THE HUI

- 4.1 The Kaupapa/Agenda for both Hui placed before the assembly a cameo of the wider themes facing Maoridom in conservation. These themes are:
- (i) Treaty issues and Crown obligations. *(but not Maori obligations?)*
 - (ii) Consultation: by whom? for whom? to whom?
 - (iii) A Maori view of Conservation, the ethic, the estate.
 - (iv) Policy development and appropriate Maori input.
- 4.2 Salient background papers supported the Kaupapa/Agenda.
- 4.3 The North Island Hui was held at Palmerston North under the Kakahu/cloak of Ngati Rangitane at their newly opened and impressive venue Tanenuiarangi House. North Island Boards with the exception of Waikato were represented.
- 4.4 The South Island Hui was held in Christchurch under the kakahu/cloak of Ngai Tahu whanui and within "the ancestral lands of Kai Tahu". Welcome was especially extended to those who had travelled the great sea of Tawhaki that embraces the islands of Rekohu (Chatham Islands). South Island Boards with the exception of Nelson were represented.
- 4.5 Invited speakers included, Tom Winitana and Professor Bruce Biggs at the North Island hui and Piri Sciascia and Maika Mason at the South Island hui.

"The most important thing is the future of Iwi
and the promotion of Maori Conservation
Values."

Ruth Harris
Hawkes Bay/Rangitikei Board
North Island Hui 20/21 May 1992

5.0 REPORTS ON THE SESSIONS

5.1 Introduction

- 5.1 Conservation Authority members chaired the sessions either individually or as a panel.

Following the Palmerston North Hui it was generally held that insufficient time was accorded participants to vent 'burning issues'. As a result a change in the programme was made to the South Island Hui to enable this need to be addressed.

Further modification through re-ordering the sessions assisted the second hui.

- 5.1.2 Below is a table of the sessions presenters/chair.

Topic	PALMERSTON NORTH		CHRISTCHURCH	
	Presenter	Chair	Presenter	Chair
Treaty Issues	Tipene O'Regan	Tipene O'Regan	Tipene O'Regan	Tipene O'Regan
Consultation	Open Forum	Tumu Te Heuheu	Tipene O'Regan	Tipene O'Regan
Policy Development	Open Forum	John Klaricich	Piri Sciascia	John Klaricich
Kaupapa Atawhai	Tom Winitana	Panel	Maika Mason	John Klaricich
NB: Tumu Te Heuheu was in Brazil for the Earth Summit at the same time as the South Island Hui.				

- 5.1.3 The commentary that follows is a synthesis of the two hui. Although where a recommendation or specific issue pertains sui generis to one hui, that hui is identified.

5.2 TE TIRITI O WAITANGI

"Ko te Kuini o Ingarangi ka whakarite
Ka wakaae ki nga Rangatira, ki nga Hapu
Ki nga tangata katoa o Nu Tirani, te tino
Rangatiratanga o o ratou wenua o ratou
kainga me o ratou taonga katoa."

Introduction

This session aimed to explore the Articles of the Treaty of Waitangi as a basis for discussion on the principles of the Treaty and in particular the Crown Principles and Section 4 of the Conservation Act.

Summary of Presentation and Discussion

Preamble

Mr Tipene O'Regan noted that there are many fundamental notions of Treaty obligations and duties. Difficulties of interpretations of powers and obligations under the Treaty existed between Crown and Maori.

A fundamental question for the Crown remains "who constitutes Iwi". There is a fundamental need for Iwi/Crown relationship to be legally formalised. There are two major considerations in the constitution of Iwi:

- Whakapapa
- Rohe/Takiwa

Articles of the Treaty

- Article 1 - exemplified by many things; basically State Power
- contains duty of active protection of Maori interests
- Article 2 - te tino rangatiratanga
- Article 3 - social equity

Characteristics of Article 1 and 2

(i) <u>Article 1</u>	(ii) <u>Article 2</u>
Authority	Authority
Territory	Territory
Defence	Defence
	become Crown responsibilities
Conservation	Conservation
Law and Order	Law and Order
	become Crown responsibilities

- other areas involved between Article 1 and 2
- overlap = partnership zone

Consultation should involve Iwi and or hapu and or whanau depending on the importance of the issue or concern. Maori Board members' need to address the Department's consultation procedures and practices in relation to policies, strategies and plans that are presented for consideration. Maori Board members' should not be required or expected to provide "the Iwi View" if consultation has not been adequately undertaken by the Department.

Bottom Line

The bottom line expressed at the Hui was that consultation alone is insufficient. Active participation by Iwi in the policy process, including implementation in accordance with the Treaty, is expected.

Wider Concerns

At the North Island hui Congress was proffered for consideration as an appropriate vehicle to provide assistance in the promotion and advocacy of Maori conservation issues.

In particular the North Island hui did not resolve issues relating to wider dialogue with conservation groups. The predominant viewpoint concluded that Crown/Iwi consultation be accorded due priority.

Comment

This Kaupapa generated widespread discussion much of which was Treaty based. However the recent High Court decision coupled with the benefit of a Treaty perspective provided participants with new and helpful information.

Helpful advice on the Boards role in consultation should benefit Board members in their deliberations. Both Hui were adamant that there is a need to progress beyond consultation to active participation and implementation in accordance with the Treaty.

The hui noted that any 'fixed' position on a plan could result in administrative review if a plan is predetermined and not responsive to the views expressed through the consultation process.

Ma taua ano e wehewehe nga taonga, ma taua e whiriwhiri ki te tewhea kete ki tewhea kete tawhito. Ma taua ano e raranga he kete hou mo nga taonga kaore e tika kia whaona ki nga kete tawhito.

(It is you and I who must separate out the items and sort them into each basket. It is you and I who must weave a new basket for the items which would be wrong to place in the old baskets.)

Introduction

This session's purpose was to discuss the Boards role in the development of regional policy and to ascertain the effectiveness to date of Iwi involvement in policy/legislation frameworks.

Summary of Presentation and Discussion

Preamble

want focus with the effort!
Generally Maori Board members felt that the Department was making a genuine attempt to place concerns/issues before them. However Iwi are finding it difficult to participate optimally due to constraints on resources.

A universal view existed amongst Maori Board members that they, as community leaders involved in a wide range of issues, are not able to devote as much time to Board management as non-Maori counterparts.

A similar case was put for Iwi who are not always in a position to respond and often feel bogged down in Crown priorities e.g. from other government agencies.

Treaty Perspectives and Policy Development

The Treaty perspective should be addressed in all policy and legislative initiatives. Direct concern was expressed in relation to the Historic Places Bill.

Maori Conservation Ethic and Policy Development

Concern was expressed that Maori conservation values are not adopted in policy development. However, the Department often requests Iwi to respond to departmental conservation priorities. Maori feel uncomfortable with the fundamental approach of policy and policy formulation with regard to Marine Reserves and traditional harvest issues.

Comment

Common problems encountered by Maori Board members which impact on their ability to contribute effectively at the policy level include:

- (i) The inadequate recognition by fellow Board members of Maori perspectives/interests;
- (ii) Their inability to influence agenda items;
- (iii) The pakeha style venue and format of meetings;
- (iv) The assumption that Maori members are there to contribute to Maori issues alone;
and
- (v) The quality of consultation and involvement of Iwi Maori in policy formulation, leading to an ambivalence in policy making on behalf of their iwi.

5.5 TE KAUPAPA ATAWHAI

Preamble

A Maori conservation ethic should be articulated in a manner that is essentially Maori yet compatible with the western model which is observed by the Department, other non-government bodies and endorsed in legislation.

Introduction

This session provided the opportunity to contribute to the further development of guiding principles on the knowledge and practice of Maori conservation values.

Summary of Presentation and Discussion

The theme of the presentation was to show how the connection between the natural world and whakapapa was practised by Poutini iwi. Moreover, while this particular model belonged to the West Coast, it could equally apply to any other iwi.

In pre-European times, Poutini was the kaitiaki of the West Coast. Conservation was practised more than preached, and dominated the lifestyles of iwi. Harvesting was an integral part of the whole system, managed by seasonal requirements to take and controlled by periodic prohibitions to allow the environment to recover. This practice, so common place when pakeha arrived, was itself a learned experience.

When over-crowding forced our tupuna to migrate from small South Pacific islands in search of new places, they discovered Aotearoa, a land so full of resources that the need to conserve was not considered a necessity. Over time, measured in generations, the gradual loss of species indicated that practices had to be put in place to sustain resources and safeguard the survival of iwi. The methodology was one of striking a relationship with the natural world. This relationship was expressed in human terms which linked humankind with (for example) the great forest of Tane and the marae of Tangaroa. By the disciplined use of whakapapa, iwi were at one with nature and not superior to it.

The question of whether kaitiakitanga (stewardship through knowledge gained from the oral passage of information and learning) was still relevant in this modern era was posed. This was illustrated by the pre-colonisation line of succession from parent to child to grandchild, all living in the environment they are learning about. With external influences decreeing a move from rural to urban areas, this previously constant communication line was broken in a number of communities. The consequence is a loss of learning/knowledge. These need repairing, a possible task for Conservation Board members.

A further demonstration of relationship (as well as differing cultural priorities) is the case of bush fire-fighting, where to save the trees from risk, a known pa-site may be placed at risk through the passage of heavy plant machinery. The primary pakeha concern would be for the pa-site whereas the Maori priority would be to save the trees.

A final illustration of relationships is the common practice for Maori to name their children after nature/natural phenomena.

How we conduct ourselves and maintain our relationships with the natural world, determines the state of the environment that we leave to our grandchildren. The kaitiaki for Poutini was the tieke/saddleback, and this child of Tane should be the model for our behaviour.

Recommendation

"That we notify the Director-General that he instruct his Maori Team to prepare a draft with the view to developing a set of principles to articulate that Maori Conservation Ethic, so that a representative group of Maori Board Members and other Iwi Maori who have an interest come together to discuss it modify it and so on."

The basis shall be from the cultural values of Maori Conservation Ethics. For example, Commitment to the Indigenous Taonga and the guidelines set down in this Hui.

Comment

The development of a set of principles on traditional knowledge and practices is a critical component in increasing the effectiveness of Maori Board members in their contributions to Conservation Board agendas. The factors of:

- inter-generational responsibilities;
- sustainable management practices;
- connectedness of tangata to whenua;
- physical relationships to flora/fauna; and control systems,

may well be the basis from which the principles will be drawn.

The administrative relationship between DOC and the Board's will ensure:

- a harmonious exchange of views;
- and the putting in place of an advocacy and education process which is user friendly to both.

The end result will be a working relationship between traditional knowledge and its western model that benefits iwi, the Department, other non-government organisations, the country, and is endorsed in legislation.

APPENDICES

HUI WHAKATOPU

North Island: Palmerston North, Tanenuiarangi House

PARTICIPANTS

Kuru Waaka	Kaumatua Te Papa Atawhai
Tumu Te Heuheu	New Zealand Conservation Authority
John Klaricich	New Zealand Conservation Authority
Tipene O'Regan	New Zealand Conservation Authority
Kevin Prime	Northland Conservation Board
Betty Williams	Auckland Conservation Board
Bill Ohia	Bay of Plenty Conservation Board
Joseph White	Bay of Plenty Conservation Board
Hiro Hamilton	East Coast Conservation Board
Jennifer Moses	East Coast Conservation Board
Whakapumautanga Downs	Taupo/Tongariro Conservation Board
Rakei Taiaroa	Taupo/Tongariro Conservation Board
Heitia Hiha	Hawkes Bay/Rangitikei Conservation Board
Ruth Harris	Hawkes Bay/Rangitikei Conservation Board
Archie Taiaroa	Taranaki/Wanganui Conservation Board (In part)
Mita Carter	Wellington Conservation Board
John Barrett	Wellington Conservation Board

Officials

Bill Mansfield	Director-General
Alan Edmonds	Deputy Director-General (In part)
Murray Hosking	Deputy Director-General (In part)
Piri Sciascia	Assistant Director-General
Andrew Bignell	Executive Assistant to Director-General
Bill Carlin	Regional Conservator, Taranaki/Wanganui
Richard Sadlier	Director, Science and Research (In part)
Mick Clout	Acting Director, Protected Species (In part)
John Holloway	Director, Estate Protection (In part)
Wren Green	Director, Advocacy & Information
Kei Merito	Kaupapa Atawhai Manager, Bay of Plenty
Rangipo Metekingi	Kaupapa Atawhai Manager, Taranaki/Wanganui
Maika Mason	Kaupapa Atawhai Manager, Canterbury
Eru Manuera	Kaupapa Atawhai Unit
Haami Piripi	Kaupapa Atawhai Unit
Hone Whaanga	Kaupapa Atawhai Unit
Michael Grant	Kaupapa Atawhai Unit

Contributors

Tom Winitana	Ngai Tuhoe
Bruce Biggs	Tainui

HUI WHAKATOPU

South Island: Christchurch

PARTICIPANTS

Kuru Waaka
John Klaricich
Tipene O'Regan
Kath Hemi
Koa Marshall
Edward Ellison
Taare Bradshaw
Barbara Anglem
Stephanie Arand
Te Whea Weepu
Anake Goodall
Raana Tuuta
Tommy Solomon

Kaumatua Te Papa Atawhai
New Zealand Conservation Authority
New Zealand Conservation Authority
Marlborough Conservation Board
Aoraki Conservation Board
Otago Conservation Board
Southland Conservation Board
Southland Conservation Board
West Coast Conservation Board
West Coast Conservation Board (co-opted member)
North Canterbury Conservation Board (In part)
Chatham Islands Conservation Board
Chatham Islands Conservation Board

Officials

Bill Mansfield
Alan Edmonds
Piri Sciascia
Andrew Bignell
Michael Cuddihy
Wren Green
John Holloway
Maika Mason
Kei Merito
Matt Ellison
Eru Manuera
Hone Whaanga
Michael Grant
Harry Broad

Director-General
Deputy Director-General (In part)
Assistant Director-General
Executive Assistant to Director-General
Regional Conservator, Canterbury
Director, Advocacy & Information (In part)
Director, Estate Protection
Kaupapa Atawhai Manager, Canterbury
Kaupapa Atawhai Manager, Bay of Plenty
Kaupapa Atawhai Manager, Otago
Kaupapa Atawhai Unit
Kaupapa Atawhai Unit
Kaupapa Atawhai Unit
Minister's Office

Gordon Stephenson
Chairperson
Waikato Conservation Board
RD 1
PUTARURU

Dear Gordon

I believe that it is timely to hold a discussion at a national level on Maori conservation issues and views. I therefore propose to hold two hui, one in the North Island and the other in the South.

It is my intention that the Maori members of the Conservation Authority and nominated representatives of the Conservation Boards be involved. I therefore ask that together with your Maori Board members you nominate one Maori member to attend one of the hui.

I would encourage you to give due consideration to this request as I believe this initiative to be very important as we develop our working relationship with Iwi Maori.

I will ask the Department to follow up this request shortly through Piri Sciascia, who will be able to inform you and the Board of further details.

No reira
Noho ora mai

Denis Marshall
Minister of Conservation

HUI WHAKATOPU

Venue: Airport Gateway Motor Lodge
Iwi kaika: Ngai Tahu

PROGRAMME / TIMETABLE

Wednesday, 17 June

- 10.30 a.m. - 11.00 a.m. Powhiri
Mihimihi
- 11.00 a.m. - Noon Scenesetting
Functions and Membership of the Boards
- 12.00 p.m. - 1.00 p.m. LUNCH
- 1.00 p.m. - 3.00 p.m. Te Wahanga Tuatahi: "Whakatara"
Consultation - Tipene O'Regan (Ngai Tahu)
- 3.00 p.m. - 3.30 p.m. AFTERNOON TEA
- 3.30 p.m. - 5.30 p.m. Te Wahanga Tuarua: "Te Tiriti o Waitangi"
Treaty Perspective - Tipene O'Regan (Ngai Tahu)
- 6.00 p.m. - 7.30 p.m. DINNER

Thursday, 18 June

- 9.00 a.m. - 10.30 a.m. Te Wahanga Tuatoru: "Te Kaupapa Atawhai"
Maori Conservation Ethic
Mr John Klaricich (Nga Puhī)
Mr Maika Mason (Ngai Tahu)
- 10.30 a.m. - 11.00 a.m. MORNING TEA
- 11.00 a.m. - 12.30 p.m. Te Wahanga Tuawha: "Kaupapa Here"
Policy Development
Mr John Klaricich (Nga Puhī)
Mr Piri Sciascia (Ngati Kahungunu)
- 12.30 p.m. - 1.30 p.m. LUNCH
- 1.30 p.m. - 2.00 p.m. Concluding Remarks
Poroporaki

Venue: Tanenuiarangi House
Iwi kaika: Ngati Rangitane

PROGRAMME / TIMETABLE

Thursday, 21 May

- 10.30 a.m. - 12.00 p.m. Powhiri; Ngati Rangitane
Mihimihi
Scenesetting
Director-General; Bill Mansfield
Department Kaumata; Kuru Waaka (Te Arawa)
NZCA Members; Messrs O'Regan, Te Heuheu, Klaricich
Assistant Director-General; Piri Sciascia
- 12.00 p.m. - 1.00 p.m. LUNCH
- 1.00 p.m. - 3.00 p.m. Te Wahanga Tuatahi: "Te Tiriti o Waitangi"
Treaty Perspective - Tipene O'Regan (Ngai Tahu)
- 3.00 p.m. - 3.30 p.m. AFTERNOON TEA
- 3.30 p.m. - 5.00 p.m. Te Wahanga Tuarua: "Whakatara"
Consultation - Mr Tumu Te Heuheu (Ngati Tuwharetoa)
- 6.00 p.m. - 7.30 p.m. DINNER
- 8.00 p.m. Presentation
Professor Bruce Biggs (Tainui)

Friday, 22 May

- 8.30 a.m. - 10.00 a.m. Te Wahanga Tuatoru: "Kaupapa Here"
Policy Development - Mr John Klaricich (Nga Puhi)
- 10.00 a.m. - 10.30 a.m. MORNING TEA
- 11.00 a.m. - 12.30 p.m. Te Wahanga Tuawha: "Te Kaupapa Atawhai"
Maori Conservation Ethic - NZCA Members
- T. Winitana (Ngai Tahoe)
- 12.30 p.m. - 1.30 p.m. LUNCH
- 1.30 p.m. - 2.00 p.m. Concluding (Waaka/Te Heuheu/Klaricich/O'Regan/Mansfield)
Poroporaki
South Island Hui
- Mihi whakamutunga: Ngati Rangitane



CONSERVATION

ID G8-4383

17 October 1990

E nga reo, e nga mana, tena koutou.

Te Papa Atawhai
Mauri ora ki te rangi
Te Papa Atawhai
Mauri ora ki te whenua

Tenei ra matau o te Tari e mihi atu nei ki tena ki tena o koutou kua whiriwhiria nei e te wa hei reo, hei kanohi mo runga i nga Poari Atawhai huri noa i te motu.

Kaati, ka mihi hoki i te ahuatanga o o tatau tini mate e hinga atu nei, e hinga mai na.

E moe e koutou ma i te moenga roa. Haere. Okioki. Waihotia mai o koutou uri hei whakakiki i o koutou whawharua.

Na reira, tatau ma, nau mai haere mai. Na nga Mema Paremata koutou i whakatau hei tangata hapai ake i nga kaupapa e pa nei ki a Te Papa Atawhai, otira he tautiaki i nga ahuatanga maha heke iho i a Papatuanuku, i a Ranginui. E koa ana matau i ta koutou whakaaetanga, ko koutou ano hei mema mo enei poari.

Koa tonu na i ta koutou tokomaha, mai i Muriwhenua ki Murihiku ahu ake ki Rekohu, ki Wharekauri. Kaati, mau ano nga korero e korero, te ata titiro hoki i nga whakahaere-a-takiwa, te tuku panui hoki ki te Minitia.

Na reira, na ratau te whakaaraara: "Kia hiwa ra, kia hiwa ra! Maranga! Whitikiria te hope"

He kupu ruarua noa iho enei na matau o te Tari, e mihi atu nei ki a koutou, kia mohio ai koutou he wahanga Maori kei te whakahaeretia; anei ano hoki matau hei tautoko i a koutou, e nga matua, e nga whaea. Anei etahi pukapuka hei tirohanga hei kororerero ma koutou.

No reira, noho ora mai i roto i nga manaakitanga a te Atua, mana tatau hei arataki hei manaaki. A te wa ka tutataki atu ki tena marae ki tena marae o tatau. Kia kaha ki a tatau, mei kore e kitea, he painga mo tatau ma roto i enei whakahaerenga kawanatanga, ae ranei, kahore ranei

Kaati, kia manawanui, kia manawaroa.

Piri Sciascia
Assistant Director-General
Kaupapa Atawhai

DEPARTMENT OF CONSERVATION
PO BOX 10 420 WELLINGTON, NEW ZEALAND
50 BRUCE GATE STREET, WELLINGTON 1
TELEPHONE 64 04 7 10720 FAX 7 11082

6. Action Plan and Timetable

To achieve the goals certain actions are required by all contributors at the appropriate time. The following action plan and timetable describes the broad path to be followed towards achieving the goals. These steps will be included as outputs and objectives in the various departmental business plans.

Step	Actions	Contributors Involved	Timeframe
1. Finalise the Kaupapa Atawhai Management Plan (contributing to all goals)	<ul style="list-style-type: none"> • Finalise draft. • Obtain EMT sanction. • Obtain input from key contributors. • Authorise and publish. 	All	End August, 1991
2. Incorporate the Plan into Dept Planning Process (contributing to all goals)	<ul style="list-style-type: none"> • Arrange input into <ul style="list-style-type: none"> -KA Policy Programme 92/93 -KA Development Prog. 92/93 -Treaty Issues Programme 92/93 -Corporate Planning Process 92/93 -Budget Planning Cycle 92/93 -Annual Reporting 92/93. 	<ul style="list-style-type: none"> • KA Unit • Directorate • Conservancies • Corporate Plng • Budget Mgr • MSU Manager 	Mid Nov., 1991
3. Directorates/Task Forces/Units Implement the Plan (contributing to goals 1,2,3,4)	<ul style="list-style-type: none"> • Brief directorates/TFs/units on the expectations of them (roles, functions, implementation). • Incorporate KA and TP in 1992/94 business plans and budgets and report back. • Progressively implement. • Monitor progress and report. 	<ul style="list-style-type: none"> • Directors • Managers • Planners • KA Units (Treaty Mgr/ Policy Mgr) 	Start Sept 1991. Thereafter ongoing for 3 years
4. Conservancies Implement the Plan (contributing to goals 3 and 5)	<ul style="list-style-type: none"> • Brief regions and KA mgrs on expectations of them. • Continue to incorporate KA and TP in 1992/94 business plans and budgets and report back. • Progressively implement. • Monitor progress and report. 	<ul style="list-style-type: none"> • Reg Cons. • KA Mgrs • Mgrs • KA Unit (Treaty policy and development) 	Start Sept 1991. Thereafter ongoing for 3 years

Step	Actions	Contributors Involved	Timeframe	
5.	Participate and Encourage Interdepartmental Co-operation and Consultation (contributing to goals 1,2,4)	<ul style="list-style-type: none"> • Identify key contributors. • Promote discussion on end. • Hold participating forum. • Co-ordinate ongoing dialogue. • Feed into policy development. 	<ul style="list-style-type: none"> • Minister of Arts and Culture • Waitangi Tribunal • Maru Whenua Te TAI • Manatu Maori • Waka Toi • Te Pou Here Taonga • MAF • KA Unit • KAMs 	Start March, 1992 Completed May 1993
6.	Provide Minister of Conservation and Director General with National Maori Consultation (contributing to goals 5 and 6)	<ul style="list-style-type: none"> • Arrange consultation with <ul style="list-style-type: none"> - Kaumatua - Boards - NZCA • Arrange hui - Nth/Sth Island members. 	<ul style="list-style-type: none"> • Minister? • EMT • KA Unit • Conservancies • Iwi • Kaumatua • NZCA 	End Sept, 1992
7.	Promote Dialogue between Maori Community and NGOs (contributing to goal 6)	<ul style="list-style-type: none"> • Identify key contributors. • Promote conceptual model for dialogue. • Follow through. 	<ul style="list-style-type: none"> • Forest & Bird • Maruia • Fed Mountain Clubs • National Maori Congress • NZ Maori Council • Maori Women's Welfare League 	End Dec., 1992
8.	Participate in Global Issues (contributing to goal 2)	<ul style="list-style-type: none"> • Support from Maoridom to participate in international forum. • Form links with other indigenous/global bodies. 	<ul style="list-style-type: none"> • MERT • National Maori Congress • KA Unit • ADG • Other interested bodies 	End of 1992
9.	Conduct Evaluation and Review Steps	<ul style="list-style-type: none"> • Identify evaluation criteria. • Collect data. • Develop conclusions. • Review operations as required. 	<ul style="list-style-type: none"> • KA Unit (Contract) • Directors • Regions • Mgrs/Planners 	End March, 1993
10.	Involve Rangatahi (contributing to goal 6)	<ul style="list-style-type: none"> • Identify key contributors through existing networks. • Develop strategy. • Promote programmes (nationwide). • Follow through. 	<ul style="list-style-type: none"> • Directorates • Conservancies • KA Unit 	Begin August, 1993



Office of the

MINISTER OF CONSERVATION

PARLIAMENT BUILDINGS, WELLINGTON, NEW ZEALAND TELEPHONE (04) 471 9978 FACSIMILE (04) 473 3446

20 April 1994

Bruce Mason
Trustee
Public Access New Zealand Inc
P O Box 5805
Moray Place
DUNEDIN

Dear Mr Mason

Hon Denis Marshall, Minister of Conservation has asked me to thank you for your recent letter concerning the use of conservation land in settling Maori land claims.

You can expect to hear from Denis Marshall personally when he has had an opportunity to consider your letter.

Yours sincerely

A handwritten signature in blue ink that reads "Liz Brooks".

Liz Brooks
Private Secretary (Conservation)

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand

Phone & Fax 64 3 476 1544

Friday, 20 May 1994

Hon Denis Marshall
Minister of Conservation
Parliament Buildings
WELLINGTON

Fax: (04) 473 3446

Dear Mr Marshall

I refer to your reply dated 13 May 1994 concerning specific Maori Treaty rights which are the presumed legal basis for you stating that a 'partnership' exists between iwi Maori and the Crown.

You replied that the "rights" are most probably expressed in Privy Council decision in Appeal #14 of 1993. The reference you have given to this case is inadequate to locate it. Please cite the full case reference (named parties, date of decision, and the division of the Privy Council which heard the case).

Yours faithfully



Bruce Mason
Trustee

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand

Phone & Fax 64 3 476 1544

Tuesday, 26 April 1994

N Z Local Government Association
P O Box
WELLINGTON

Dear Sirs

"Partnership" and the Treaty of Waitangi

Enclosed with the compliments of Public Access New Zealand is a paper entitled *The Principle of 'Partnership' and the Treaty of Waitangi*.

Although this was written with a focus on public lands and waters administered by the Department of Conservation, its conclusions are equally applicable to resources administered by local government.

We are aware that district and regional regional councils are grappling with the difficult task of interpreting the Treaty and Treaty principles as the first step to defining their relationship with iwi. We hope that the enclosed paper will be of assistance to that end. Further copies of the paper can be obtained from us for \$4 including postage. An order form is enclosed.

We would welcome your association's responses to the paper and would be interested in receiving copies of any papers or 'instructions' from Government to the Association, or from yourselves to councils relating to implementing sections 6 to 8 of the Resource Management Act 1991.

Yours faithfully,



Bruce Mason
Trustee

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand

Phone & Fax 64 3 476 1544

Tuesday, 26 April 1994

The District Manager
Kapiti Coast District Council
Private Bag
PARAPARAUMU

Dear Sir

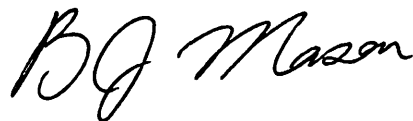
"Partnership' and the Treaty of Waitangi

Enclosed with the compliments of Public Access New Zealand is a paper entitled *The Principle of 'Partnership' and the Treaty of Waitangi*. Although this was written with a focus on public lands and waters administered by the Department of Conservation, its conclusions are equally applicable to resources administered by local government.

We are aware that your Council recently entered into a Memorandum of Partnership with local iwi with reference to the Treaty of Waitangi.

We would be very interested in hearing Council's response to the issues raised by our paper, and in relation to the Memorandum of Partnership.

Yours faithfully,



Bruce Mason
Trustee

MEMORANDUM OF PARTNERSHIP

GLOSSARY

Hapu	Sub-tribe, usually a number of whanau with a common ancestor.
Iwi	Tribe and people.
Kaitiakitanga	Exercise of guardianship, stewardship.
Mana whenua	Customary authority exercised by an iwi or hapu in an identified area.
Rohe	Territory, boundary. Defines area within which a Tangata Whenua group claims traditional association and mana whenua.
Tangata Whenua	Iwi or hapu which holds mana whenua over a particular area.
Taonga	Term of deep spiritual meaning. Treasures, sacred possessions which are prized and protected. Not limited to things which can be seen or touched.
Taura Here	Maori who maintain links to, and claim Tangata Whenua status in, an area other than the one they are living in.
Tikanga	Tradition, customary values and practices, including protocol, ceremony, values and beliefs.
Whanau	An extended family including the nuclear family.

NOTE:

Ngati Raukawa ki te Tonga comprises the following hapu:

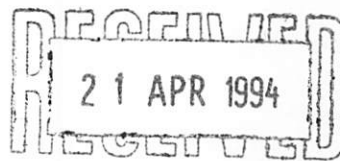
Ngati Kapu
Ngati Koroki
Ngati Pare
Ngati Maiotaki
Ngati Huia ki Katihiku

Seems a needed
signing away of the
Council's sovereignty
If

Bruce Mason
Andrew Beham
Lynce Johnson
Kerrin Smith
David Cradler,

MEMORANDUM OF PARTNERSHIP

between



ATI AWA KI WHAKARONGOTAI INC

TE RUNANGA O RAUKAWA INC

TE RUNANGA O TOA RANGATIRA INC

and

KAPITI COAST DISTRICT COUNCIL

signed on

WEDNESDAY 9 FEBRUARY 1994



MEMORANDUM OF PARTNERSHIP

BETWEEN THE KAPITI COAST DISTRICT COUNCIL

AND NGATI TOA RANGATIRA, ATI AWA AND NGATI RAUKAWA KI TE TONGA (being the Tangata Whenua of the Kapiti Coast District)

PREAMBLE

1. The Council and the Tangata Whenua believe the Treaty of Waitangi to be a solemn compact between the Crown and the Maori people.
2. The Treaty signifies a partnership and its principles require the Treaty partners to act towards each other reasonably and with the utmost good faith.
3. The Council recognises Ngati Toa Rangatira, Ati Awa and Ngati Raukawa ki te Tonga as the Tangata Whenua of the District.
4. The Council and the Tangata Whenua are committed to building their relationship in a spirit of friendship and co-operation.
5. The Council accepts the need to understand the historical perspective of the Tangata Whenua and, similarly, the Tangata Whenua will appreciate the perspective of the other Treaty partner. To achieve partnership both parties may need to make adjustments. Continuing consultation and education is seen as the best way to do this.

PARTIES TO THE MEMORANDUM

6. The Kapiti Coast District Council is represented by its elected Council.
7. The Tangata Whenua of the District are at present represented by the following organisations:
 - Ngati Toa Rangatira is represented by Te Runanga o Toa Rangatira Inc.
 - Ati Awa is represented by Ati Awa ki Whakarongotai Inc.
 - Ngati Raukawa ki te Tonga is represented by Te Runanga o Raukawa Inc.

MEMORANDUM OF PARTNERSHIP

Tribal Authorities and Geographical Boundaries

8. The Council recognises that Ngati Toa Rangatira, Ati Awa, and Ngati Raukawa ki te Tonga each maintain their own mana within the Council's geographic boundaries.
9. The parties acknowledge that this memorandum has application only to those hapu whose boundaries lie within the Council's district.

Status of the Tangata Whenua

10. The Council recognises the special status of the Tangata Whenua as separate and distinct from other interest groups. The Council recognises the need for active protection of Tangata Whenua interests to be considered in its dealings with other parties.

GOAL

11. To forge a relationship of mutual benefit between the Kapiti Coast District Council and the Tangata Whenua that will develop into an effective and meaningful partnership.

OBJECTIVES

12. To develop consultation between the Council and the Tangata Whenua on issues that impact on their social, economic and cultural wellbeing and development.
13. To develop candid and open sharing of information between the Council and the Tangata Whenua. Care needs to be taken when using such information, and its sources should always be acknowledged.
14. To develop a mutual respect for confidences given so that confidential information can be shared. Both Council and Tangata Whenua need to have due regard to the sensitive nature of that information.
15. To develop a mutual respect between the Council and the Tangata Whenua at all times, particularly in public statements and even when disagreement is apparent.

MEMORANDUM OF PARTNERSHIP

16. To develop a mutual commitment to the progress of the Kapiti Coast District with particular regard to the environment. The Council and the Tangata Whenua will each play their part in a bicultural partnership.
17. To develop opportunities within the limitations of Council's powers and functions, that enable the Tangata Whenua, as a Treaty partner, to share in the decision-making of the district.
18. To develop an ongoing programme of information sharing and mutual education to promote greater understanding of cross cultural values and practices.

STATEMENT OF PRINCIPLES

19. In developing the partnership with the Tangata Whenua and in observing its functions and duties as prescribed in legislation the Council will uphold the following principles:
 - i) To actively promote the sustainable management of the District's natural and physical resources and those taonga of significance to the Tangata Whenua, in a way that recognises the cultural and spiritual relationship of the Tangata Whenua with the natural world.
 - ii) To develop an effective partnership with the Tangata Whenua in the management of the district's natural and physical resources by the exercise of the utmost good faith, cooperation, flexibility and responsiveness in their dealings with each other.
 - iii) To promote active participation of the Tangata Whenua in the preparation, implementation and review of resource management policies and plans.
 - iv) To have particular regard to the rights of the Tangata Whenua in the management and development of resources by recognising and providing for kaitiakitanga.
 - v) To recognise the Rangatiratanga right of the Tangata Whenua as guaranteed in Article II of the Treaty of Waitangi, to retain responsibility and control of the management and allocation of their resources.

All one way obligations.

~~No~~ No or minimal obligation on the Tangata Whenua.

MEMORANDUM OF PARTNERSHIP

CONSULTATION

Policy/Tikanga

20. The Tangata Whenua of this District are independent tribes which each maintain their own mana and tikanga. For any issue requiring consultation the parties will agree whether the consultation should take place collectively or separately.

Community Board/Ward Consultation

21. The parties note that Community Boards/Wards Standing Committee may be involved in consultation with Tangata Whenua in their areas.

Taura Here

22. The Council recognises the advocacy role of the Tangata Whenua in issues affecting the Taura Here.

Principles of Consultation

23. On issues requiring consultation Council will:
- i) provide sufficient information to the Tangata Whenua so that they can make informed decisions.
 - ii) provide reasonable time for both the participation of the Tangata Whenua and the consideration of the advice given.
 - iii) give genuine consideration of that advice, including a willingness to change if that is the result of the consultation.

Protection of Sensitive Information

24. From time to time Tangata Whenua may provide Council with sensitive and confidential information, e.g. concerning waahi tapu or other sites of significance, or aspects of tikanga Maori.
- i) The Council will undertake to protect such information in its care and restrict access to it, in accordance with the Local Government Official Information and Meetings Act 1987 (s7) and the Resource Management Act 1991 (s42(1)(a)).

MEMORANDUM OF PARTNERSHIP

*To secret
evidence.*



- ii) The Council will give due respect and recognition to "silent files" or plans held by Tangata Whenua.
- iii) Tangata Whenua will undertake to protect any sensitive or confidential information that Council may give to them.

RESOURCING

25. The Council and Tangata Whenua recognise that in fulfilling its statutory duties the Council will require assistance and information from the Tangata Whenua.

Where such assistance and information is required, the Council acknowledges that the Tangata Whenua will need to be adequately resourced and where appropriate, for such resources to be provided for through contractual arrangements. The Council recognises the importance of providing for this in its annual estimates.

The Council and Tangata Whenua acknowledge that resourcing may include not only financial support, but also the provision of particular advice, expertise and information.

COUNCIL'S STATUTORY RESPONSIBILITIES

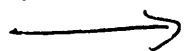
26. The parties acknowledge that:
- i) the Council is bound by legislation which prescribes its powers and functions, and by common law principles relating to the exercise of its statutory powers and functions.
 - ii) the contents of this memorandum shall not require the Council to act otherwise than in accordance with its statutory powers and the common law principles affecting those powers.

ONGOING CONSULTATION

27. To encourage sharing at a formal level, both the Tangata Whenua and the Council are committed to meeting at least twice yearly to discuss issues of mutual importance, indicate areas of concern and revise procedures as necessary.

MEMORANDUM OF PARTNERSHIP

*To secret
evidence.*



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MEMORANDUM OF PARTNERSHIP

There will be provision for additional meetings to be held at the request of either the Tangata Whenua or the Council.

REVIEW OF MEMORANDUM

28. This memorandum will be reviewed within the first six months of every triennium of the Council or at such time as may be requested by either of the parties. It may be amended or expanded by mutual agreement.

TERMS OF AGREEMENT

29. It is the intention of the parties that this memorandum have a continuing life, subject to such amendments as may be agreed to under the review provisions made in the previous clause.

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand

P  

Wednesday, 20 April 1994

Hon Denis Marshall
Minister of Conservation
Parliament Buildings
WELLINGTON

Fax: (04) 473 3446

Dear Mr Marshall

Brian Turner of Sawyers Bay has referred to me your reply of 25 March 1994 concerning use of conservation land in settling Maori land claims.

You state that Mr Turner "needs to be aware that Maori have specific Treaty rights", (some) of which are expressed in (statute) law, and that iwi Maori are Treaty partners.

We are aware of the content of section 4 Conservation Act 1987, but this gives no specifics as to what rights or 'Principles' apply to Maori on lands held under that Act.

It would be helpful for understanding the approach taken by yourself as Minister and your department on such matters to have a list of the "specific Treaty rights" to which you refer in your reply to Mr Turner. **Could you please itemise the 'rights' derived from the Treaty and statute and common law, and the legal basis for stating that a 'partnership' exists between iwi Maori and the Crown.**

Yours faithfully



Bruce Mason
Trustee



Office of the

MINISTER OF CONSERVATION

PARLIAMENT BUILDINGS, WELLINGTON, NEW ZEALAND TELEPHONE (04) 471 9978 FACSIMILE (04) 473 3446

25 March 1994

Bruce
This is revealing,
and alarming.

Brian

Brian Turner



DUNEDIN

Dear Mr Turner

Thank you for your letter of 7 March 1994 concerning the possible use of conservation land in settling Maori claims.

National parks and related protected areas cover about 27 million hectares of land. That public estate is unlikely to be substantially reduced as a result of claims to the Waitangi Tribunal.

In dealing with any proposal to use Crown land in settlement of claims the Government takes into account what is in the best interests of all New Zealanders. For conservation lands that duty includes ensuring public use is not denied and that the quality of stewardship is not compromised.

You need to be aware that Maori have specific Treaty rights and, where they are expressed in law, the courts will also give recognition and definition to them. Iwi Maori feel that, at the very least, as Treaty partners they should have a significant say about how conservation lands are used.

The Court of Appeal has found that the Crown has an obligation to grant at least some form of redress for established Maori grievances. As the Waitangi Tribunal has found, however, it is not inconsistent with the Treaty of Waitangi that the Crown and the Maori people should agree upon a measure of compromise and change.

The Crown is formulating its claim settlement policies with considerable care and is trying to balance the host of competing interests involved. For example, last year the Hon Doug Graham and I initiated a process which involves public consultation about proposals to use, in claim settlement, land which is administered by the Department of Conservation. That process involves the publicly nominated conservation boards. It also involves other bodies such as the regional fish and game councils and the New Zealand

Historic Places Trust when their responsibilities are affected. The process ensures that all stakeholders in the public conservation estate have the chance to have their say and to be heard by the Government.

It is my determination that the conservation of New Zealand's natural and historic resources will continue to receive a very high priority in the Crown's actions and you should not fear that there will be any wholesale privatisation of our nation's heritage.

Thank you for your support on the Little Valley Station designation issue.

Yours sincerely

A handwritten signature in black ink, appearing to read "Denis Marshall". The signature is written in a cursive style with a large initial 'D'.

Denis Marshall
Minister of Conservation

File ref: WTT 0002
(WDTHIRD.MEM)

28 September 1993

TO: Joris de Bres
Manager - Public Awareness

Wren Green
Director - Planning and External Agencies

cc Eru Manuera
Director - Kaupapa Atawhai

SUBJECT: **INVOLVEMENT OF THIRD PARTIES IN THE TREATY OF
WAITANGI CLAIMS POLICY PROCESS**

1. In a number of claims to land in the conservation estate, the Department has now experienced the tension in the interplay between the following expectations:
 - (a) ***The Claimant*** - expects confidentiality in negotiating redress with the Crown; may see third party involvement simply as diverting the Crown from the issue at hand.
 - (b) ***The Crown*** - in the guise of the Minister in Charge of Negotiations and the Treaty of Waitangi Policy Unit (TOWPU) Department of Justice - wants to settle claims expeditiously at minimum cost and to manage the political process; expects minimum public involvement.
 - (c) ***Conservation NGO and User Groups*** - some fear conservation outcomes will be subverted by Treaty-related outcomes; expect to be able to identify the options and recommend a favoured course of action by the Crown in each case.

Refer to Appendix 1.

2. KAD has been involved with TOWPU in a process of developing a way of managing this tension so that the Crown acts positively to bridge the gap between the expectations of the claimants and third parties. A solution was built around consultation in each case with the statutory bodies affected, such as the conservation boards, with the agreement of the claimant. (See Appendix 2.)

3. The task reached the stage of submitting (for EMT approval) a further information paper to be added to Policy and Procedure Manual #2.10.27 (see appendices 3-5). EMT has referred the paper back for further work on the task, with PEA in particular, on the management issue of the approach to be taken with new boards/chairs (see appendices 6 and 7).
4. I would appreciate it if our three divisions could combine resources to pursue this task by setting up a joint working party. If you will nominate a person(s) I can set up a meeting - or attend a meeting if you think PA or PEA should lead. A copy of the background papers is attached.
5. Previous action has involved Andrew Bignell (VSD), John Daniels (HR), Graeme Goodwin and John Galilee (EPPD), and Dave Field, Hugh Logan and Richard Suggate from their respective conservancies. PSP and PEA did not respond to invitations to contribute.



Wayne Devine
Land Advisor - Kaupapa Atawhai Division

cc - Regional Conservators, Nelson/Marlborough, Bay of Plenty and Canterbury
For your information. Do you wish to contribute? How do you wish to participate?

Attachments:

1. Report by WD to PS of 1 March 1993. Treaty Claims/Conservation Estate - Crown Involvement of the Public in Settlement Decisions - a Review.
2. Progress report by WD to PS of 3 May 1993. Consultation on Treaty Claims Affecting the Conservation Estate.
3. Report by WD to EM of 24 ^{August} ~~September~~ 1993. Consultation on Claims Resolution with Statutory Bodies.
4. Cover note by EM to EMT of 24 September 1993. Consultation on Claims Resolution with Statutory Bodies.
5. Draft addition to Manual: 4. Kaupapa - Consultation on Claims Resolution with Statutory Bodies.
6. Cover note from EM to PS of 7 September 1993 conveying resolution of North Canterbury Conservation Board re Public Consultation Process.

7. Report by Susan King of 12 August 1993. Lessons Learned from Involvement in the Process to Resolve the Treaty Claim over Takapourewa (Stephens Island).
8. The Negotiating Process (extract from paper by TOWPU - July 1993).

1 March 1993

TO: Piri Sciascia, ADG (Iwi Liaison & Maori Perspectives)

CC: Haami Piripi, Manager, Treaty Issues Unit

SUBJECT: **TREATY CLAIMS/CONSERVATION ESTATE - CROWN INVOLVEMENT OF THE PUBLIC IN SETTLEMENT DECISIONS - A REVIEW**

Background - Policy Development

1. In a report to the Minister of Conservation on 26 November 1991 (in the context of the Ngai Tahu claim) the Director-General said that: **"Officials are attempting to develop a process for effective consultation early in the claim resolution process"**.
2. In October 1992 the NZCA adopted a draft set of principles to be applied when parts of the conservation estate were transferred from the control of the Department. These included: **"That Boards and where appropriate the NZCA be fully consulted from the earliest stage"**. They did not, however make reference to other consultation with other bodies or the public.
3. Independently the Department had been developing its own position. For example, in the 26 November 1991 report to the Minister, the Director-General wrote: **"... it is imperative that full and early discussions are held with the Quangos and NGO's"**. That was somewhat at odds with the Minister of Justice/TOWPU view that public consultation should take place at the end of the process when a settlement package for Ngai Tahu had been agreed in principle between the Crown and the claimants. However, the Director-General was allowed to confidentially brief NGO's in a general way about the course of negotiations.
4. The matter came to a head over the Takapourewa (Stephens Island) claim where Crown officials were divided about the need for full public consultation. It ended up stalemated (because of the precedent) and in the hands of the Cabinet Strategy Committee.
5. In order to make progress on the mediation of that claim (and in the context of the Ngai Tahu claim) the Department had to accept the approach that:
 - at the time the Minister of Justice goes public over a settlement package (at the end of the negotiation/mediation process) the Department would carry out any process of public consultation required by the Reserves Act etc.

This meant that:

- where special legislation was used the Department would not undertake any public consultation;
 - if there was no statutory requirement for public consultation the Department would only comply with the requirements of administrative discretionary justice;
 - it set to one side discussion about earlier stages of Quango and public involvement in other claims.
6. In regard to administrative justice, the key requirement concerns the need to protect the interests of persons or bodies adversely affected by a decision. It obliges the decision-maker to give a full opportunity for representations to be made by the affected parties once a tentative course of action has been decided.
7. Given their functions under s6M and s26Q Conservation Act, conservation boards and/or fish and game councils were especially identified by the Department (confirmed orally by Crown Law) as affected parties in this context.

Case Experience

8. The Department has recently had a range of experience with public involvement on Maori-related issues (both inside and outside the formal Treaty claims process). This experience is reviewed below.
9. Mt Hikurangi - in this case the provisions of s436 Maori Affairs Act were used, bypassing the usual requirements for public involvement through the provisions of s26(3) Conservation Act. As a result FMC etc were successful in getting an undertaking from the Minister of Conservation that he would not use this legal "loop-hole" again. They successfully argued (politically rather than legally) that it had denied them the opportunity to make sure that their interests were not adversely affected and criticised several elements of the settlement package.
10. Taupo beds - in this case public concern was largely dampened during the negotiation process by responsive and confidential briefings of the regional and district councils. Some ill-will arose from exclusion of the conservation board from the process at the earlier stages and its virtual marginalisation throughout the process. (NB: If there had been a fish and game council the NGO lobby would have been significant.)
11. Te Ranga - in this case end-point consultation with the NZ Historic Places Trust (s24(5) Reserves Act) and then formal public notice of the intention of revocation of the reservation (s24(2) of the Act) did not result in any objections.

12. Motatau - this case was handled closely with the conservation board from the early stages. While the Board had some internal problems it reached a decision likely to be acceptable to the Runanga. The local branch of the Royal Forest and Bird Protection Society endorsed the final proposal.
13. Takapourewa (Stephens Island) - this case has been the most controversial, partly because it has been chosen by some NGO's as a test case, having implications for the Ngai Tahu and other major settlements, and partly because of the special conservation significance of the island, among other factors. Confidential briefing of key people at the mid-point of negotiations only fuelled the fire of NGO concerns. Consultation with the full conservation board at the end point is proving time-consuming and expensive and has developed into a formal public consultation process by the board.

Voluntary Agency Co-Operation

14. In September 1988 an accord was reached between the Department and the key NGO's involving a greater effort to co-operate in achieving conservation goals in order to "co-ordinate and complement the diverse skills of the [voluntary] agencies and departmental staff". The shift "to a greater responsibility for conservation throughout the community" was also flagged by the Department in its overview of the State of Conservation in New Zealand in 1990: A Brief to the Incoming Administration, also known as "The Green Print". As well, it was stated in the paper that: "The high level of public interest [in the management of the conservation estate] leads to a web of consultations between departmental staff and interested groups" including "conservationists".
15. A perception by some NGO of a breakdown in this spirit of co-operation, in relation to the Department's stance in Treaty claims, has already played a part in the formation of a new lobby group - Public Access New Zealand Inc - and confrontational meetings with a few key NGO players.

The Obligations of Consultation

16. Consultation involves "the communication of a genuine invitation to give advice and a genuine consideration of that advice" (Judge McCechan CP403/91, and Court of Appeal CA73/92). That requires:
 - sufficient information being supplied by the consulting to the consulted party to enable it to tender helpful advice (see paragraphs 17 and 18);
 - sufficient time being allowed for the consulted party to consider the matter;
 - the consulting party, while entitled to have a working plan, keeping its mind open and ready to change and start afresh.

17. In determining when to consult about a proposed decision some key questions are:
- What are the perspectives of others (e.g. clients, Ministers, member of minority groups)?
 - Are there matters of cultural difference to be taken into account?
 - Will it affect religious or spiritual sensibilities?
 - Will a public interest be disadvantaged?
 - What are the likely advantages and disadvantages for each stakeholder?
 - Are the parties sufficiently able to advocate their own interest?

Often these questions are best answered through consultation with interested parties.

18. One of the purposes of the Official Information Act 1982 is to enable the people of New Zealand to more effectively participate in the making and administration of laws and policies. It is intended that official information be "protected" only to "the extent consistent with the public interest and the preservation of personal privacy" (s4).
19. The Ombudsman has up-held a decision by the Department of Justice not to release detailed papers concerning the Ngai Tahu claim while negotiations are in progress. He argued along the lines that, given the obligation of the Crown as a Treaty partner and the longstanding grievances which are the subject matter of the claim, it is in the public interest that the negotiation be effective and conclusive. To that end he believed that premature disclosure of incomplete issues and proposals could materially affect the orderly process of negotiation and would be likely to prejudice the Crown's ability to reach agreement. The Department has used the same argument in keeping its papers on the Ngai Tahu and Ngati Koata claims confidential until the negotiation or mediation was or is near an end.

Summary/Conflicts

20. From the foregoing considerations it is clear the tensions exist which are most simply expressed, as follows, in summary:
- early consultation vs prejudice of the desired outcome;
 - the merits of public participation vs the merits of Treaty redress;
 - speedy process vs time for third-parties to consider;
 - knowledge of officials vs the combined knowledge of all stakeholders;
 - a developed package vs an open mind;
 - co-operation with conservationists vs co-operation with claimants.

Discussion

21. There is a growing commitment by some officials and some Cabinet Ministers to final decisions on Treaty claims not being made until the public have "been informed about the nature of the settlement and given the opportunity to put their views to the

Government", to use the words of the Minister of Justice in February 1993 in relation to the Ngai Tahu claim. I assume for the purpose of this paper that there is an intention to meet the legal requirements of "consultation" (see paragraph 15) and it's my understanding of the intention that the consultation will take place only at the end of the negotiation or mediation process.

22. Our case experience (paragraphs 8-12) would suggest that this might work only in the case of parts of common heritage properties of low public interest (e.g. Te Ranga) or where a public perception is created of a status quo or improvement in public rights (e.g. the Taupo beds).
23. There is a strong case for earlier stages of consultation in those instances likely to be of public concern, or to test the level of that concern. The following factors lead me to this conclusion; i.e. in general:
 - at the end of a negotiation the Crown negotiators and claimants are anxious to have the settlement concluded swiftly;
 - they are committed as individuals to the outcome agreed in principle;
 - there will be a fair degree of commitment of Ministers and of Crown organisations by that stage;
 - only options which have occurred to the two parties will have been considered;
 - only factors considered relevant by the two parties will have been fully taken into account;
 - there will be a desire by the Crown to minimise delay and further cost in moving forward.
24. These factors work against fulfilling the obligations of consultation (i.e. where it is entered into only at the end of the process). I say this because in my opinion there is a real risk it will result in:
 - caution about sharing information which does not support the proposal;
 - relative meanness in the time allowed for third parties to catch up and consider the proposal;
 - cost-consciousness about consultation coming on top of the cost of negotiation;
 - ready dismissal of options already considered and not preferred;
 - scepticism about the greater merit of new options; and
 - easier dismissal of new considerations as irrelevant to the proposal.

25. At the same time I accept the need to manage the cost of public consultation, to not unduly try the patience of claimants seeking redress, and to not unreasonably raise the expectations of third parties about the process of reaching claim settlements. But, I am not satisfied that we have yet found an appropriate balance in relation to proposals which affect parts of the conservation estate in which there is, or likely to be, high interest by conservationists.
26. The claims which are of particular concern are those where parts of the conservation estate are but an (possibly significant) element of a broader settlement package. I believe the factors working against proper consultation will be most evident there. For example, we might get away with the extended consultation process developing with Takapourewa (where part of the conservation estate is the whole package) but are less likely to with a broad claim like the Ngai Tahu's. In that case, even in two-party confidential negotiations, the Department itself is sometimes seen as an obstacle to progress.
27. Consultation at earlier stages would remove some of the adverse effects of the factors which operate if consultation is left to the very end.

A Proposal for Earlier Consultation - Key Assumptions

28. Given the foregoing discussion I am convinced there is a need for early (and on-going) consultation with the conservation Quangos about claims for parts of the conservation estate which because of their size, status, use or recognition nationally or regionally are likely to be of special interest to conservationists. I am less convinced of the need for early consultation with NGO's only because of the difficulty of ensuring they do not disrupt an "orderly process of negotiation" nor "prejudice the Crown's ability to reach agreement". However, I think you have to make the assumption that to consult one is not to consult the other, and without consulting both at the same time will compound the problems of end-point consultation (paragraph 23).
28. I believe there is no case to go beyond the above bodies before the end-point consultation. They will be the primary leaders of Pakeha opinion about the acceptability of a settlement proposal in so far as the conservation estate is affected.

The Procedure

30. If the approach has merit, a procedure could be drafted by Treaty Issues Unit for the Policy and Procedure Manual and would be followed as new cases arise or existing cases can be fitted into process. Ministerial endorsement of the procedure might be desirable.

RECOMMENDATIONS

31. It is recommended that you:

- (a) note that because of others' expectations about progress with claims the Department has had difficulty with its approach that there should be full and early discussion with Quangos and NGOs (see paragraph 5);
- (b) note that any inability to engage in early consultation entails a certain cost in terms of co-operation between the Department and NGOs, given our experience with recent claims and like cases (see paragraph 14) and leads to various conflicts (see paragraph 19) as result of fears being created by the unknown;
- (c) note the obligations which have to be met if there is to be third-party consultation about a settlement agreement reached in principle between the Crown and a claimant (see paragraph 15);
- (d) note the difficulty of complying with these obligations in certain cases (see paragraph 22 and 23);
- (e) note my conclusions (paragraph 17) about the need, in those cases, to consult earlier with Quangos and key NGO's than we are currently being allowed;
- (f) take the following action; either -
 - (i) refer this paper to EMT for discussion; or
 - (ii) request Treaty Issues Unit to undertake consultations about the issues with policy directorates, and/or conservancies and/or the NZCA, and/or TOWPU (Justice); and
- (g) endorse the submission of the Department's final approach on consultation to the Minister of Conservation, as a procedure, for his concurrence.



Wayne Devine
Land Advisor, Treaty Issues Unit

Footnote

In discussion with Bill Mansfield, Murray Hosking and Alan Edmonds on 18 March 1993 Treaty Issues Unit was requested to pursue the option in (f)(ii), working in association with TOWPU.

3 May 1993

TO: Piri Sciascia, ADG (Iwi Liaison & Maori Perspectives)

CC: Haami Piripi, Manager (Treaty Issues Unit)
Eru Manuera, Manager (Kaupapa Maori Policy)
David Field, Regional Conservator, Rotorua

**SUBJECT: CONSULTATION ON TREATY CLAIMS AFFECTING THE
CONSERVATION ESTATE**

1. On 18 March 1993 the EMT/Treaty Issues Group considered my paper of 1 March (see attached) and authorised an approach to TOWPU.
2. A written request for a meeting was made to the Secretary of Justice (see attached) and I subsequently met with Mr John Delamere of TOWPU. He is manager of the group dealing with the Ngati Awa claim, among others.
3. John indicated that TOWPU was much more relaxed about third-party consultation over claim settlements than it had been 12 months ago. He agreed that, once a framework agreement was signed by the principle parties, the Crown should meet with the Bay of Plenty Conservation Board and the Whakatane District Council so that they had input, through the Crown, from the beginning of negotiation.
4. In anticipation I have obtained a clearance from the Waitangi Tribunal Division (Justice) to provide the Board (in the agenda for its meeting on 10 May) with a copy of the Ngati Awa claim. I have also suggested to Dave Field that, at the same meeting, he provide Board members with a copy of the DOC claim negotiation procedure (2.10.27 approved by EMT 22 February 1993). This will prepare the Board for a discussion with Crown representatives at a subsequent meeting.
5. John Delamere and I also discussed the possibility that the Board might want to invite the claimants to discuss their claim in person at the same meeting or a separate one. We both felt relaxed about that.
6. As to meeting with Bay of Plenty environmental NGO's, John Delamere preferred to take a reactive approach, waiting for any fall-out from the Board and Council meetings. Legalistically that position is a correct one, but will not win friends for TOWPU among those interest groups. The easiest let-out for DOC is taking the position that Justice (not Conservation) controls the settlement/negotiation process. The Board is not of course prevented from talking with NGO's, if it chooses, about the pre-negotiation information it obtains.
7. The framework agreement provides that the negotiation will be in private unless both the principle parties otherwise agree.

Conclusion

8. Having gone through this example with TOWPU representative I believe Treaty Issues Unit is now in a position to draft a general procedure for the P&P Manual, for comment by other policy divisions, before submission to EMT.

Recommendation

9. That you table this interim report at the next EMT/Treaty Issues Group meeting. Copies are attached for that purpose.



Wayne Devine
Land Advisor
Treaty Issues Unit

#3

24 August 1993

TO: Eru Manuera, Director Kaupapa Atawhai Division

SUBJECT: **CONSULTATION ON CLAIMS RESOLUTION WITH STATUTORY BODIES**

1. On 18 March 1993 the EMT/Treaty Issues Group authorised the then Treaty Issues Unit to explore with TOWPU (Justice) the need to meet consultation obligations with third parties within the Crown process framework for claims resolution.
2. I reported to Piri Sciascia on 3 May 1993 about the outcome of discussion with the TOWPU representative. Piri asked me to draft a procedure on the topic to go in the Policy and Procedure Manual.
3. I decided to undertake this task by way of preparing another information paper to be added to Procedure Number 2.10.27 [Negotiation for the Ownership and Management of Land in the Case of Treaty of Waitangi Claims Affecting the Conservation Estate].
4. The paper is limited solely to the process of involvement of statutory bodies.
5. I also discussed with the TOWPU representative the political issue of how the Crown should deal with the strongly expressed desire of the conservation NGO's to participate in a like manner. I reported to Piri in May that the TOWPU representative preferred to take an approach of not treating such bodies in a like manner (since there is no administrative law requirement to support it). The TOWPU representative preferred that the Crown deal reactively with public concerns that might arise at the time of the consultation with statutory bodies.
6. In a subsequent development the Minister of Justice agreed to brief national conservation NGO leaders about the Waikuku proposal (Ngai Tahu claim) before it was publicly announced and referred to statutory bodies for consideration. The meeting was confrontational regarding the Crown process and the Minister(s) may not be of a mind to repeat it.
7. The North Canterbury Conservation Board will be advising the Director-General of Conservation that the Crown should run a fully public process, having gone through their own process of public consultation about Waikuku.
8. Our experience would point to the benefits of early participation of all interested parties outweighing the costs from the Department's point of view. It remains necessary to obtain a political commitment to that perspective and to develop a process to sit alongside the process for consultation with statutory bodies.
9. The draft addition to Procedure Number 2.10.27 is attached for consideration with a view to approval by EMT for incorporation in the Policy and Procedure Manual.

Recommendations

10. It is recommended that you:

- (a) endorse and forward the attached paper to Piri Sciascia for inclusion in an EMT agenda;
- (b) note that the matter of consultation with interested parties other than statutory bodies is unresolved; and
- (c) consider how the Directorate should best address the resolution of that issue both politically and inter-departmentally.



Wayne Devine
Land Advisor

CONSULTATION ON CLAIMS RESOLUTION WITH STATUTORY BODIES

Background

Attached for EMT consideration is a paper on the public consultation process wherein statutory bodies, linked by legislation to the Department, are recruited to perform that advocacy function. The paper is written in Policy and Procedures format to facilitate ready entry into the appropriate manual, assuming approvals are forthcoming.

While our experience to date with conservation boards facilitating consultation has been favourable, there is no certainty that this will remain so indefinitely. Wayne Devine informs that the Canterbury Fish and Game Council was not enthused with their supernumerary role at the second Waikuku public hearings at Tuahiwi marae on 23 August 1993. Moreover, the North Canterbury Conservation Board report on Waikuku is likely to signify support for an earlier and fuller consultation process unhampered by time and other constraints.

I bring these signs to EMT notice on the eve of the public consultation process in Southland to address Crown/iwi intentions on Whenua Hou and Crown Titi Islands. We will monitor these meetings for signs of similar dissatisfaction. Anticipating the likelihood of conservation board chairpersons being brought together early in their new term, the issue of public consultation on Treaty claims could well be an important agenda item.

As the process issue of consultation with environmental groups requires a political decision, this factor is set aside until such a direction is forthcoming. Suffice to say that our experience to date indicates that early participation by all parties in the public consultation process will be superior to the controlled technique now in place.

Recommendations

It is recommended that EMT:

- * approve the inclusion of the attached paper in the appropriate Policy and Procedure manual;
- * note the dynamics now coming to the fore in the use of statutory bodies as facilitators of the public consultation process;
- * note that the Kaupapa Atawhai division will monitor upcoming consultations with a view to proposing future remedies in process terms; and
- * agree to the issue of public consultation being an agenda item for the inaugural meeting of chairpersons of conservation boards.


Eru Manuera
Director, Kaupapa Atawhai

5

**TREATY OF WAITANGI ACT 1975
AND THE
DEPARTMENT OF CONSERVATION : TE PAPA ATAWHAI**

**Negotiation for the Ownership and Management of Land in the Case of Claims
Affecting the Conservation Estate**

**NO. 4 : KAUPAPA - CONSULTATION ON CLAIMS RESOLUTION WITH
STATUTORY BODIES**

Introduction

This is the fourth of a series of papers intended to explain to Maori and Pakeha the approach of the Department of Conservation to claims, under the Treaty of Waitangi Act 1975, which affect land held in Crown ownership under the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980 and the Wildlife Act 1953 - the conservation estate.

This paper describes the department's approach to consultation with authorities such as conservation boards and administering bodies about the resolution of claims concerning past Maori grievances over land.

The Acts listed above (and the Historic Places Act 1993) provide for the appointment of a number of bodies dealing with the conservation of natural and historic resources. Their functions and powers are diverse and may be affected by the outcome of a claim to land in the conservation estate.

As a first step towards settlement of an established claim the Crown and the claimant will hold exploratory discussions. The matters discussed are then recorded in a framework agreement. The document might cover such matters as the procedures and agenda for detailed negotiations. It may also set out the claimant's position on different aspects of the claim. During the exploratory discussions the agreement of the claimant will be sought about consultation with third parties.

PART 1 : GENERAL APPROACH

Duty to Consult

If the Crown accepts the recommendations of the Waitangi Tribunal, or proposals arising from direct negotiation with claimants, it can implement a settlement in one of two ways, by:

- the use of existing statutory discretions, if possible; or
- legislating for that purpose, if necessary.

In any particular case, the use of an existing statutory discretion imposes 'a duty to act fairly' in making a decision. The duty protects the interests of statutory bodies who might be adversely affected by a proposal, and may create a duty to selectively consult even when no requirement for general public consultation is provided for in statute.

[It should be noted that the approaches in this paper do not necessarily apply in any case where settlement is legislated for.]

Approach

- Allowing affected bodies a full opportunity for written representations to be made to the Crown, through prior notice of a proposed discretionary decision; and
- Giving proper consideration to their representations.

Participation

The process of consultation will be more efficient if affected bodies are able to indicate, prior to the Crown determining its negotiating position, how any adverse effect on their interests might be avoided or mitigated in the development of the proposal for settlement of a claim. (In the subsequent consultation the Crown will then be able to demonstrate how it has dealt with their concerns.)

Approach

Seeking arrangements for affected bodies to appropriately participate in the evaluation of options, before a Crown negotiating position is formulated.

PART 2 : BODIES TO BE CONSULTED

While this paper deals with consultation with statutory bodies the duty to consult also applies to individuals who might be adversely affected by a proposal e.g. lessces of land in the conservation estate. The bodies primarily concerned (but not necessarily the only ones) are listed below.

Conservation Boards

These bodies have a jurisdiction over all areas controlled by the department but not generally over those controlled by an administering body (s.6M Conservation Act). They have conservation management planning and other functions.

Approach

Providing information and seeking advice from the Conservation Board if the claim is for an area of land in its jurisdiction.

Fish and Game Councils

These bodies have a jurisdiction over sports fish and game, including maintaining and improving the sports fish and game resource, and representing the interests and aspirations of anglers and hunters (s.26Q Conservation Act).

Approach

Involving the sports fish and game council for the area (either directly or through liaison with the conservation board) if the claim might affect its statutory land interests.

NZ Historic Places Trust

This statutory body has functions and powers relating to historic places, wherever they occur (Historic Places Act 1993). In particular it has the power to register places of historic significance, administers powers to protect archaeological sites, and is a Heritage Protection Authority under the Resource Management Act.

Approach

Involving the NZ Historic Places Trust in any proposals affecting historic reserves, registered historic places, and other places of historical significance.

Administering Bodies

These bodies include reserve boards, local authorities in which a Crown reserve is vested or which have been appointed to control and manage a reserve, managers of marginal strips, and any committee controlling a specific reserve or conservation area in a capacity akin to that of the other bodies listed.

Approach

If a claim affects land under the control of an administering body, involving that body in terms of its jurisdiction.

[It should be noted that this series of papers only deals with land claims. The same issue (the duty to consult) arises with other claims affecting the jurisdiction of some of these statutory bodies. In the case of national issues the Department would recommend consultation with national bodies (e.g. the NZ Conservation Authority) rather than regional bodies.]

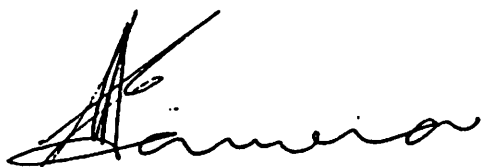
7 September 1993

Executive Management Team

PUBLIC CONSULTATION PROCESS

In its report of 26 August 1993 to the Director General on consultation with the public over the Waikuku claim, the North Canterbury Conservation Board passed a six point resolution. Resolution No 6 is attached to illustrate the perceived need for the public consultation process to start earlier than is the current practice. Admittedly, the methodology has an "experimental" feel to it and is but the second (Marlborough Conservation Board consultation on Takapourewa being the first) of its kind. Nevertheless, acceptance of the resolution will allow for a managed consultative process, rather than one which has the appearance of being suddenly sprung on an unsuspecting public. Moreover, this may address one of the concerns of environmental groups at not being involved in process terms as now appears to be the case.

For your information.



Eru Manuera
Director, Kaupapa Atawhai

Attachment: Resolution 6, an extract from the North Canterbury Conservation Board report to the DG dated 26 August 1993.

6. That the Crown should review the process it follows for public consultation in order to give sufficient time and information at the beginning of the consultation phase to allow for meaningful public understanding and comment.

A point expressed in many submissions, and an undercurrent in others, was their concern over the place of New Zealanders in the Crown - Treaty partner negotiations. There was concern that the proposal appeared as if from nowhere when it was announced by the Ministers last month, that there seemed to be so much agreement to it (by the Crown, Ngai Tahu and Waimakariri District Council) that it was in effect a fait accompli, and that there was a rush to gather public comment.

These concerns are shared by the Board. Not only was it the only body which was inviting public comment, but it was placed in a position, not of its own making, where it had to receive some criticism of its actions in calling for submissions within the time it did, and of considering the submissions so soon after the closing time for them. The Ministerial instructions about the timeframe for a response were not helpful, and in the Board's opinion contributed to some of the criticisms received about the process of Board and public consultation.

Another aspect of criticism of the process was that much additional information about the proposal's effects only emerged at a relatively late date, when the Ngai Tahu Maori Trust Board presented its submission at the public forum. People felt that they had insufficient time to digest and comment upon this new information.

It was good that the extra information was made available to the public. It would have been better if it had been provided earlier, preferably at the beginning of the public consultation period.

What this points to, in the Board's opinion, is an urgent need to review how the Crown takes what is essentially a very big step of starting with a privately negotiated proposal and turning it into a proposal which has widespread public understanding, strong public support, and which can serve to strengthen race relations in this country. In these terms, asking a Conservation Board for its views, which as it is a public body appointed to bring forward public viewpoints implicitly means asking the Board to gather public views, is dumping an awful lot on that Board. It is not really something which a Board, having regard to its statutory functions, can be expected to satisfactorily achieve, still less when operating under difficult time constraints. Asking the Board (and as a consequence the public) to look at only part of the total proposal compounds the difficulties. It should therefore come as no surprise that the process of consultation has not gone as smoothly as it could, most visibly demonstrated by the response of the North Canterbury Fish and Game Council.

Just how the wider process of public education and consultation should be conducted is beyond the brief of the Board, but lessons must be learnt from this exercise, so that they can be applied to the next settlement proposal.

Conclusion

It is appropriate to conclude this letter by repeating the remark made by one Board member at the end of the meeting, that the resolution that the Board has passed, the final one in its three year term, was in his opinion the most important.

#7

**LESSONS LEARNT FROM INVOLVEMENT IN THE PROCESS
TO RESOLVE THE TREATY CLAIM OVER TAKAPOUREWA
(STEPHENS ISLAND)**

The Marlborough Conservation Board became involved in the process of assessing and advising on the proposals to resolve the Treaty of Waitangi claim over Takapourewa (Stephens Island) in December 1992. The Director General of Conservation wrote to the Board at that time asking for its advice, which it provided following its 25 May 1993 meeting.

At the Board's 27/28 July 1993 meeting, after reviewing the process, it was agreed that the Board would pass on its comments to the Director General and the New Zealand Conservation Authority. This is in recognition that this is the first time a conservation board has been involved in what is still an evolving process to resolve such treaty claims. The Board feels lessons can be learnt from its experience which may help other boards discharge similar obligations as effectively as possible.

Background

In 1988 Takapourewa (Stephens Island) became surplus to the requirements of the Ministry of Transport. Jim Elkington (the claimant) placed a claim on behalf of Ngati Koata iwi in 1989 over the island. Because of the good relationship between the iwi and the local Department of Conservation (DOC) staff, it was decided to proceed to mediation with DOC representing the Crown. This mediation commenced before the Marlborough Conservation Board was set up in late 1990.

In response to the Director General's request, the Board entered an intensive period of considering the proposals. The Board took approximately six and a half months from the time of the request to delivering its advice, although this included the summer break. The main events in this time were:

- 1 A special briefing for Board members by Department of Conservation staff 29 January 1993.
- 2 A special meeting in Blenheim including a public forum and in committee discussion at which the details of the public consultation process were decided 23 February 1993. The Board called for submissions closing 7 May 1993.
- 3 A public forum in the evening after the Board's 23 March 1993 meeting in Blenheim.
- 4 The Board chairperson attended a meeting of the Nelson Conservation Board 19 April 1993 at which the Takapourewa proposals were discussed.
- 5 The Board passed its resolutions constituting its advice at its 25 May 1993

meeting at Waikawa Marae in Picton.

Board members were provided with many papers and background briefing documents to aid their understanding of the issues. These included: the draft deeds of settlement and management and the draft plan for management, departmental briefing papers, and the Ngati Koata no Rangitoto ki te Tonga Trust's constitution. The major submissions and a sample of the shorter ones were sent to Board members after the closing date for submissions. The complete file of submissions was also available to some Board members immediately before the 25 May 1993 meeting. An analysis of submissions was prepared by the Board's executive officer as a Board paper for that meeting.

After the Board provided its advice to the Director General, Ngati Kuia appealed on a boundary issue to the Maori Appellate Court. Rangitane placed a counter claim to the island with the Waitangi Tribunal. The Minister recently announced that the proposals will be put on hold until these counterclaims are resolved.

Consequences for the Board

The time demand on Board members by this one issue was obviously a heavy one. Most other items were deferred from the Board's March and May meetings which meant the July meeting took an extra day to deal with a very heavy agenda. This issue was clearly of far greater moment than any other issue it had addressed in its first three years. It probably would not have been equipped to handle such a major issue any earlier in its term.

Some Board members also experienced unpleasant reactions from some members of the public as they went about their usual non-conservation board activities between meetings. This was intimidating and uncomfortable for the Board members involved.

Lessons Learnt from the Process

The Board acknowledged that it indisputably has a role in advising on the change of status of such a nationally and internationally important area. There are some matters of detail regarding the process that the Board feels could be improved upon:

- (i) It was agreed that Board members should have been offered the opportunity to receive copies of all submissions to study before the meeting held to discuss them.
- (ii) There should have been a longer time between the close of submissions and the meeting at which they would be discussed. The time from 7-25 May 1993 was not sufficient to process submissions, produce a summary and provide the opportunity to look at all submissions. The Board felt somewhat pressured by the haste generated by having so short a time to consider submissions.
- (iii) The Board was happy to have its executive officer produce the summary of submissions. There was some discussion about how independent of the Board

or Department the summariser should be, and it was decided that the executive officer was the appropriate person.

- (iv) It was suggested that submissions that arrived after the closing date should not be taken into account.
- (v) The Board found it hard to anticipate the wide interest the issue would generate. It was suggested that the call for submissions should have been advertised nationally, because of the New Zealand-wide interest in the issue. Submissions were received from all around the country as a result of a campaign through Royal Forest and Bird Protection Society newsletters. Concern was raised in some submissions about the lack of national advertising.
- (vi) There were difficulties in providing access to the information for the public. There has to be a better way of doing it. Conventional press releases and mention in public notices did not seem to go widely enough. Some people did not know the information was available, and there was insufficient time before the first public forum for people to have received and read the information package.
- (vii) It was suggested that the Board must be involved in some way earlier in the mediation.
- (viii) It was felt that each claim should be addressed on its own merits.
- (ix) It was felt that the success of the process was in part based on the Board's consensus-based approach. Board members remained open-minded and hard issues were debated openly both within and outside the Board's formal meetings. Everyone's input was valued and listened too, and most concerns were addressed in the Board's final recommendations.

The Board felt that, overall, the process was a successful one. It wants to emphasise that the process worked well and was largely well-managed.

Susan King
Chairperson
Marlborough Conservation Board

12 August 1993

File ref: WIT 0002
(WDTHIRD.MEM)

FXI folks
ex Forest Bid
Some points seem
to be slowly sinking
in.

COPY FOR YOUR
INFORMATION

28 September 1993

TO: Joris de Bres
Manager - Public Awareness

Wren Green
Director - Planning and External Agencies

cc Eru Manuera
Director - Kaupapa Atawhai

SUBJECT: INVOLVEMENT OF THIRD PARTIES IN THE TREATY OF
WAITANGI CLAIMS POLICY PROCESS

1. In a number of claims to land in the conservation estate, the Department has now experienced the tension in the interplay between the following expectations:
 - (a) *The Claimant* - expects confidentiality in negotiating redress with the Crown; may see third party involvement simply as diverting the Crown from the issue at hand.
 - (b) *The Crown* - in the guise of the Minister in Charge of Negotiations and the Treaty of Waitangi Policy Unit (TOWPU) Department of Justice - wants to settle claims expeditiously at minimum cost and to manage the political process; expects minimum public involvement.
 - (c) *Conservation NGO and User Groups* - some fear conservation outcomes will be subverted by Treaty-related outcomes; expect to be able to identify the options and recommend a favoured course of action by the Crown in each case.

Refer to Appendix 1.

2. KAD has been involved with TOWPU in a process of developing a way of managing this tension so that the Crown acts positively to bridge the gap between the expectations of the claimants and third parties. A solution was built around consultation in each case with the statutory bodies affected, such as the conservation boards, with the agreement of the claimant. (See Appendix 2.)

3. The task reached the stage of submitting (for EMT approval) a further information paper to be added to Policy and Procedure Manual #2.10.27 (see appendices 3-5). EMT has referred the paper back for further work on the task, with PEA in particular, on the management issue of the approach to be taken with new boards/chairs (see appendices 6 and 7).
4. I would appreciate it if our three divisions could combine resources to pursue this task by setting up a joint working party. If you will nominate a person(s) I can set up a meeting - or attend a meeting if you think PA or PEA should lead. A copy of the background papers is attached.
5. Previous action has involved Andrew Bignell (VSD), John Daniels (HR), Graeme Goodwin and John Galilee (EPPD), and Dave Field, Hugh Logan and Richard Suggate from their respective conservancies. PSP and PEA did not respond to invitations to contribute.



Wayne Devine

Land Advisor - Kaupapa Atawhai Division

cc - Regional Conservators, Nelson/Marlborough, Bay of Plenty and Canterbury
For your information. Do you wish to contribute? How do you wish to participate?

Attachments:

1. Report by WD to PS of 1 March 1993. Treaty Claims/Conservation Estate - Crown Involvement of the Public in Settlement Decisions - a Review.
2. Progress report by WD to PS of 3 May 1993. Consultation on Treaty Claims Affecting the Conservation Estate.
3. Report by WD to EM of 24 ^{August} ~~September~~ 1993. Consultation on Claims Resolution with Statutory Bodies.
4. Cover note by EM to EMT of 24 September 1993. Consultation on Claims Resolution with Statutory Bodies.
5. Draft addition to Manual: 4. Kaupapa - Consultation on Claims Resolution with Statutory Bodies.
6. Cover note from EM to PS of 7 September 1993 conveying resolution of North Canterbury Conservation Board re Public Consultation Process.

7. Report by Susan King of 12 August 1993. Lessons Learned from Involvement in the Process to Resolve the Treaty Claim over Takapourewa (Stephens Island).
8. The Negotiating Process (extract from paper by TOWPU - July 1993).

[REDACTED]

1 March 1993

TO: Piri Sciascia, ADG (Iwi Liaison & Maori Perspectives)

CC: Haami Piripi, Manager, Treaty Issues Unit

SUBJECT: TREATY CLAIMS/CONSERVATION ESTATE - CROWN INVOLVEMENT OF THE PUBLIC IN SETTLEMENT DECISIONS - A REVIEW

Background - Policy Development

1. In a report to the Minister of Conservation on 26 November 1991 (in the context of the Ngai Tahu claim) the Director-General said that: "Officials are attempting to develop a process for effective consultation early in the claim resolution process".
2. In October 1992 the NZCA adopted a draft set of principles to be applied when parts of the conservation estate were transferred from the control of the Department. These included: "That Boards and where appropriate the NZCA be fully consulted from the earliest stage". They did not, however make reference to other consultation with other bodies or the public.
3. Independently the Department had been developing its own position. For example, in the 26 November 1991 report to the Minister, the Director-General wrote: "... it is imperative that full and early discussions are held with the Quangos and NGO's". That was somewhat at odds with the Minister of Justice/TOWPU view that public consultation should take place at the end of the process when a settlement package for Ngai Tahu had been agreed in principle between the Crown and the claimants. However, the Director-General was allowed to confidentially brief NGO's in a general way about the course of negotiations.
4. The matter came to a head over the Takapourewa (Stephens Island) claim where Crown officials were divided about the need for full public consultation. It ended up stalemated (because of the precedent) and in the hands of the Cabinet Strategy Committee.
5. In order to make progress on the mediation of that claim (and in the context of the Ngai Tahu claim) the Department had to accept the approach that:
 - at the time the Minister of Justice goes public over a settlement package (at the end of the negotiation/mediation process) the Department would carry out any process of public consultation required by the Reserves Act etc.

This meant that:

- where special legislation was used the Department would not undertake any public consultation;
 - if there was no statutory requirement for public consultation the Department would only comply with the requirements of administrative discretionary justice;
 - it set to one side discussion about earlier stages of Quango and public involvement in other claims.
6. In regard to administrative justice, the key requirement concerns the need to protect the interests of persons or bodies adversely affected by a decision. It obliges the decision-maker to give a full opportunity for representations to be made by the affected parties once a tentative course of action has been decided.
 7. Given their functions under s6M and s26Q Conservation Act, conservation boards and/or fish and game councils were especially identified by the Department (confirmed orally by Crown Law) as affected parties in this context.

Case Experience

8. The Department has recently had a range of experience with public involvement on Maori-related issues (both inside and outside the formal Treaty claims process). This experience is reviewed below.
9. Mt Hikurangi - in this case the provisions of s436 Maori Affairs Act were used, bypassing the usual requirements for public involvement through the provisions of s26(3) Conservation Act. As a result FMC etc were successful in getting an undertaking from the Minister of Conservation that he would not use this legal "loop-hole" again. They successfully argued (politically rather than legally) that it had denied them the opportunity to make sure that their interests were not adversely affected and criticised several elements of the settlement package.
10. Taupo beds - in this case public concern was largely dampened during the negotiation process by responsive and confidential briefings of the regional and district councils. Some ill-will arose from exclusion of the conservation board from the process at the earlier stages and its virtual marginalisation throughout the process. (NB: If there had been a fish and game council the NGO lobby would have been significant.)
11. Te Ranga - in this case end-point consultation with the NZ Historic Places Trust (s24(5) Reserves Act) and then formal public notice of the intention of revocation of the reservation (s24(2) of the Act) did not result in any objections.

12. Motatau - this case was handled closely with the conservation board from the early stages. While the Board had some internal problems it reached a decision likely to be acceptable to the Runanga. The local branch of the Royal Forest and Bird Protection Society endorsed the final proposal.
13. Takapourewa (Stephens Island) - this case has been the most controversial, partly because it has been chosen by some NGO's as a test case, having implications for the Ngai Tahu and other major settlements, and partly because of the special conservation significance of the island, among other factors. Confidential briefing of key people at the mid-point of negotiations only fuelled the fire of NGO concerns. Consultation with the full conservation board at the end point is proving time-consuming and expensive and has developed into a formal public consultation process by the board.

Voluntary Agency Co-Operation

14. In September 1988 an accord was reached between the Department and the key NGO's involving a greater effort to co-operate in achieving conservation goals in order to "co-ordinate and complement the diverse skills of the [voluntary] agencies and departmental staff". The shift "to a greater responsibility for conservation throughout the community" was also flagged by the Department in its overview of the State of Conservation in New Zealand in 1990: A Brief to the Incoming Administration, also known as "The Green Print". As well, it was stated in the paper that: "The high level of public interest [in the management of the conservation estate] leads to a web of consultations between departmental staff and interested groups" including "conservationists".
15. A perception by some NGO of a breakdown in this spirit of co-operation, in relation to the Department's stance in Treaty claims, has already played a part in the formation of a new lobby group - Public Access New Zealand Inc - and confrontational meetings with a few key NGO players.

The Obligations of Consultation

16. Consultation involves "the communication of a genuine invitation to give advice and a genuine consideration of that advice" (Judge McCechan CP403/91, and Court of Appeal CA73/92). That requires:
 - sufficient information being supplied by the consulting to the consulted party to enable it to tender helpful advice (see paragraphs 17 and 18);
 - sufficient time being allowed for the consulted party to consider the matter;
 - the consulting party, while entitled to have a working plan, keeping its mind open and ready to change and start afresh.



17. In determining when to consult about a proposed decision some key questions are:
- What are the perspectives of others (e.g. clients, Ministers, member of minority groups)?
 - Are there matters of cultural difference to be taken into account?
 - Will it affect religious or spiritual sensibilities?
 - Will a public interest be disadvantaged?
 - What are the likely advantages and disadvantages for each stakeholder?
 - Are the parties sufficiently able to advocate their own interest?

Often these questions are best answered through consultation with interested parties.

18. One of the purposes of the Official Information Act 1982 is to enable the people of New Zealand to more effectively participate in the making and administration of laws and policies. It is intended that official information be "protected" only to "the extent consistent with the public interest and the preservation of personal privacy" (s4).
19. The Ombudsman has up-held a decision by the Department of Justice not to release detailed papers concerning the Ngai Tahu claim while negotiations are in progress. He argued along the lines that, given the obligation of the Crown as a Treaty partner and the longstanding grievances which are the subject matter of the claim, it is in the public interest that the negotiation be effective and conclusive. To that end he believed that premature disclosure of incomplete issues and proposals could materially affect the orderly process of negotiation and would be likely to prejudice the Crown's ability to reach agreement. The Department has used the same argument in keeping its papers on the Ngai Tahu and Ngati Koata claims confidential until the negotiation or mediation was or is near an end.

Summary/Conflicts

20. From the foregoing considerations it is clear the tensions exist which are most simply expressed, as follows, in summary:
- early consultation vs prejudice of the desired outcome;
 - the merits of public participation vs the merits of Treaty redress;
 - speedy process vs time for third-parties to consider;
 - knowledge of officials vs the combined knowledge of all stakeholders;
 - a developed package vs an open mind;
 - co-operation with conservationists vs co-operation with claimants.

Discussion

21. There is a growing commitment by some officials and some Cabinet Ministers to final decisions on Treaty claims not being made until the public have "been informed about the nature of the settlement and given the opportunity to put their views to the

Government", to use the words of the Minister of Justice in February 1993 in relation to the Ngai Tahu claim. I assume for the purpose of this paper that there is an intention to meet the legal requirements of "consultation" (see paragraph 15) and it's my understanding of the intention that the consultation will take place only at the end of the negotiation or mediation process. ||

22. Our case experience (paragraphs 8-12) would suggest that this might work only in the case of parts of common heritage properties of low public interest (e.g. Te Ranga) or where a public perception is created of a status quo or improvement in public rights (e.g. the Taupo beds).
23. There is a strong case for earlier stages of consultation in those instances likely to be of public concern, or to test the level of that concern. The following factors lead me to this conclusion; i.e. in general:
 - ⊙ at the end of a negotiation the Crown negotiators and claimants are anxious to have the settlement concluded swiftly;
 - ⊙ they are committed as individuals to the outcome agreed in principle;
 - ⊙ there will be a fair degree of commitment of Ministers and of Crown organisations by that stage;
 - ⊙ only options which have occurred to the two parties will have been considered;
 - ⊙ only factors considered relevant by the two parties will have been fully taken into account;
 - ⊙ there will be a desire by the Crown to minimise delay and further cost in moving forward.
24. These factors work against fulfilling the obligations of consultation (i.e. where it is entered into only at the end of the process). I say this because in my opinion there is a real risk it will result in:
 - ⊙ caution about sharing information which does not support the proposal;
 - ⊙ relative meanness in the time allowed for third parties to catch up and consider the proposal;
 - ⊙ cost-consciousness about consultation coming on top of the cost of negotiation;
 - ⊙ ready dismissal of options already considered and not preferred;
 - ⊙ scepticism about the greater merit of new options; and
 - ⊙ easier dismissal of new considerations as irrelevant to the proposal.

25. At the same time I accept the need to manage the cost of public consultation, to not unduly try the patience of claimants seeking redress, and to not unreasonably raise the expectations of third parties about the process of reaching claim settlements. But, I am not satisfied that we have yet found an appropriate balance in relation to proposals which affect parts of the conservation estate in which there is, or likely to be, high interest by conservationists.
26. The claims which are of particular concern are those where parts of the conservation estate are but an (possibly significant) element of a broader settlement package. I believe the factors working against proper consultation will be most evident there. For example, we might get away with the extended consultation process developing with Takapourewa (where part of the conservation estate is the whole package) but are less likely to with a broad claim like the Ngai Tahu's. In that case, even in two-party confidential negotiations, the Department itself is sometimes seen as an obstacle to progress.
27. Consultation at earlier stages would remove some of the adverse effects of the factors which operate if consultation is left to the very end.

A Proposal for Earlier Consultation - Key Assumptions

28. Given the foregoing discussion I am convinced there is a need for early (and on-going) consultation with the conservation Quangos about claims for parts of the conservation estate which because of their size, status, use or recognition nationally or regionally are likely to be of special interest to conservationists. I am less convinced of the need for early consultation with NGO's only because of the difficulty of ensuring they do not disrupt an "orderly process of negotiation" nor "prejudice the Crown's ability to reach agreement". However, I think you have to make the assumption that to consult one is not to consult the other, and without consulting both at the same time will compound the problems of end-point consultation (paragraph 23).
28. I believe there is no case to go beyond the above bodies before the end-point consultation. They will be the primary leaders of Pakeha opinion about the acceptability of a settlement proposal in so far as the conservation estate is affected.

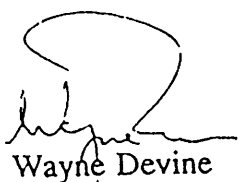
The Procedure

30. If the approach has merit, a procedure could be drafted by Treaty Issues Unit for the Policy and Procedure Manual and would be followed as new cases arise or existing cases can be fitted into process. Ministerial endorsement of the procedure might be desirable.

RECOMMENDATIONS

31. It is recommended that you:

- (a) note that because of others' expectations about progress with claims the Department has had difficulty with its approach that there should be full and early discussion with Quangos and NGOs (see paragraph 5);
- (b) note that any inability to engage in early consultation entails a certain cost in terms of co-operation between the Department and NGOs, given our experience with recent claims and like cases (see paragraph 14) and leads to various conflicts (see paragraph 19) as result of fears being created by the unknown;
- (c) note the obligations which have to be met if there is to be third-party consultation about a settlement agreement reached in principle between the Crown and a claimant (see paragraph 15);
- (d) note the difficulty of complying with these obligations in certain cases (see paragraph 22 and 23);
- (e) note my conclusions (paragraph 17) about the need, in those cases, to consult earlier with Quangos and key NGO's than we are currently being allowed;
- (f) take the following action; either -
 - (i) refer this paper to EMT for discussion; or
 - (ii) request Treaty Issues Unit to undertake consultations about the issues with policy directorates, and/or conservancies and/or the NZCA, and/or TOWPU (Justice); and
- (g) endorse the submission of the Department's final approach on consultation to the Minister of Conservation, as a procedure, for his concurrence.



Wayne Devine
Land Advisor, Treaty Issues Unit

Footnote

In discussion with Bill Mansfield, Murray Hosking and Alan Edmonds on 18 March 1993 Treaty Issues Unit was requested to pursue the option in (f)(ii), working in association with TOWPU.

3 May 1993

TO: Piri Sciascia, ADG (Iwi Liaison & Maori Perspectives) - *through Haami*

CC: Haami Piripi, Manager (Treaty Issues Unit)
Eru Manuera, Manager (Kaupapa Maori Policy)
David Field, Regional Conservator, Rotorua

SUBJECT: CONSULTATION ON TREATY CLAIMS AFFECTING THE
CONSERVATION ESTATE


1. On 18 March 1993 the EMT/Treaty Issues Group considered my paper of 1 March (see attached) and authorised an approach to TOWPU.
2. A written request for a meeting was made to the Secretary of Justice (see attached) and I subsequently met with Mr John Delamere of TOWPU. He is manager of the group dealing with the Ngati Awa claim, among others.
3. John indicated that TOWPU was much more relaxed about third-party consultation over claim settlements than it had been 12 months ago. He agreed that, once a framework agreement was signed by the principle parties, the Crown should meet with the Bay of Plenty Conservation Board and the Whakatane District Council so that they had input, through the Crown, from the beginning of negotiation.
4. In anticipation I have obtained a clearance from the Waitangi Tribunal Division (Justice) to provide the Board (in the agenda for its meeting on 10 May) with a copy of the Ngati Awa claim. I have also suggested to Dave Field that, at the same meeting, he provide Board members with a copy of the DOC claim negotiation procedure (2.10.27 approved by EMT 22 February 1993). This will prepare the Board for a discussion with Crown representatives at a subsequent meeting.
5. John Delamere and I also discussed the possibility that the Board might want to invite the claimants to discuss their claim in person at the same meeting or a separate one. We both felt relaxed about that.
6. As to meeting with Bay of Plenty environmental NGO's, John Delamere preferred to take a reactive approach, waiting for any fall-out from the Board and Council meetings. Legalistically that position is a correct one, but will not win friends for TOWPU among those interest groups. The easiest let-out for DOC is taking the position that Justice (not Conservation) controls the settlement/negotiation process. The Board is not of course prevented from talking with NGO's, if it chooses, about the pre-negotiation information it obtains.
7. The framework agreement provides that the negotiation will be in private unless both the principle parties otherwise agree.

Conclusion

8. Having gone through this example with TOWPU representative I believe Treaty Issues Unit is now in a position to draft a general procedure for the P&P Manual, for comment by other policy divisions, before submission to EMT.

Recommendation

9. That you table this interim report at the next EMT/Treaty Issues Group meeting. Copies are attached for that purpose.


Wayne Devine
Land Advisor
Treaty Issues Unit

24 August 1993

TO: Eru Manuera, Director Kaupapa Atawhai Division

SUBJECT: CONSULTATION ON CLAIMS RESOLUTION WITH STATUTORY BODIES

1. On 18 March 1993 the EMT/Treaty Issues Group authorised the then Treaty Issues Unit to explore with TOWPU (Justice) the need to meet consultation obligations with third parties within the Crown process framework for claims resolution.
2. I reported to Piri Sciascia on 3 May 1993 about the outcome of discussion with the TOWPU representative. Piri asked me to draft a procedure on the topic to go in the Policy and Procedure Manual.
3. I decided to undertake this task by way of preparing another information paper to be added to Procedure Number 2.10.27 [Negotiation for the Ownership and Management of Land in the Case of Treaty of Waitangi Claims Affecting the Conservation Estate].
4. The paper is limited solely to the process of involvement of statutory bodies.
5. I also discussed with the TOWPU representative the political issue of how the Crown should deal with the strongly expressed desire of the conservation NGO's to participate in a like manner. I reported to Piri in May that the TOWPU representative preferred to take an approach of not treating such bodies in a like manner (since there is no administrative law requirement to support it). The TOWPU representative preferred that the Crown deal reactively with public concerns that might arise at the time of the consultation with statutory bodies.
6. In a subsequent development the Minister of Justice agreed to brief national conservation NGO leaders about the Waikuku proposal (Ngai Tahu claim) before it was publicly announced and referred to statutory bodies for consideration. The meeting was confrontational regarding the Crown process and the Minister(s) may not be of a mind to repeat it.
7. The North Canterbury Conservation Board will be advising the Director-General of Conservation that the Crown should run a fully public process, having gone through their own process of public consultation about Waikuku.
8. Our experience would point to the benefits of early participation of all interested parties outweighing the costs from the Department's point of view. It remains necessary to obtain a political commitment to that perspective and to develop a process to sit alongside the process for consultation with statutory bodies.
9. The draft addition to Procedure Number 2.10.27 is attached for consideration with a view to approval by EMT for incorporation in the Policy and Procedure Manual.

Recommendations

10. It is recommended that you:
- (a) endorse and forward the attached paper to Piri Sciascia for inclusion in an EMT agenda;
 - (b) note that the matter of consultation with interested parties other than statutory bodies is unresolved; and
 - (c) consider how the Directorate should best address the resolution of that issue both politically and inter-departmentally.



Wayne Devine
Land Advisor

24 August 1993

EMT

CONSULTATION ON CLAIMS RESOLUTION WITH STATUTORY BODIES

Background

Attached for EMT consideration is a paper on the public consultation process wherein statutory bodies, linked by legislation to the Department, are recruited to perform that advocacy function. The paper is written in Policy and Procedures format to facilitate ready entry into the appropriate manual, assuming approvals are forthcoming.

While our experience to date with conservation boards facilitating consultation has been favourable, there is no certainty that this will remain so indefinitely. Wayne Devine informs that the Canterbury Fish and Game Council was not enthused with their supernumerary role at the second Waikuku public hearings at Tuahiwi marae on 23 August 1993. Moreover, the North Canterbury Conservation Board report on Waikuku is likely to signify support for an earlier and fuller consultation process unhampered by time and other constraints.

I bring these signs to EMT notice on the eve of the public consultation process in Southland to address Crown/iwi intentions on Whenua Hou and Crown Titi Islands. We will monitor these meetings for signs of similar dissatisfaction. Anticipating the likelihood of conservation board chairpersons being brought together early in their new term, the issue of public consultation on Treaty claims could well be an important agenda item.

As the process issue of consultation with environmental groups requires a political decision, this factor is set aside until such a direction is forthcoming. Suffice to say that our experience to date indicates that early participation by all parties in the public consultation process will be superior to the controlled technique now in place.

Recommendations

It is recommended that EMT:

- * approve the inclusion of the attached paper in the appropriate Policy and Procedure manual;
- * note the dynamics now coming to the fore in the use of statutory bodies as facilitators of the public consultation process;
- * note that the Kaupapa Atawhai division will monitor upcoming consultations with a view to proposing future remedies in process terms; and
- * agree to the issue of public consultation being an agenda item for the inaugural meeting of chairpersons of conservation boards.


Eru Manuera

Director, Kaupapa Atawhai

TREATY OF WAITANGI ACT 1975
AND THE
DEPARTMENT OF CONSERVATION : TE PAPA ATAWHAI

Negotiation for the Ownership and Management of Land in the Case of Claims
Affecting the Conservation Estate

**NO. 4 : KAUPAPA - CONSULTATION ON CLAIMS RESOLUTION WITH
STATUTORY BODIES**

Introduction

This is the fourth of a series of papers intended to explain to Maori and Pakeha the approach of the Department of Conservation to claims, under the Treaty of Waitangi Act 1975, which affect land held in Crown ownership under the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980 and the Wildlife Act 1953 - the conservation estate.

This paper describes the department's approach to consultation with authorities such as conservation boards and administering bodies about the resolution of claims concerning past Maori grievances over land.

The Acts listed above (and the Historic Places Act 1993) provide for the appointment of a number of bodies dealing with the conservation of natural and historic resources. Their functions and powers are diverse and may be affected by the outcome of a claim to land in the conservation estate.

As a first step towards settlement of an established claim the Crown and the claimant will hold exploratory discussions. The matters discussed are then recorded in a framework agreement. The document might cover such matters as the procedures and agenda for detailed negotiations. It may also set out the claimant's position on different aspects of the claim. During the exploratory discussions the agreement of the claimant will be sought about consultation with third parties.

PART 1 : GENERAL APPROACH

Duty to Consult

If the Crown accepts the recommendations of the Waitangi Tribunal, or proposals arising from direct negotiation with claimants, it can implement a settlement in one of two ways, by:

- the use of existing statutory discretions, if possible; or
- legislating for that purpose, if necessary.

In any particular case, the use of an existing statutory discretion imposes 'a duty to act fairly' in making a decision. The duty protects the interests of statutory bodies who might be adversely affected by a proposal, and may create a duty to selectively consult even when no requirement for general public consultation is provided for in statute.

[It should be noted that the approaches in this paper do not necessarily apply in any case where settlement is legislated for.]

Approach

- Allowing affected bodies a full opportunity for written representations to be made to the Crown, through prior notice of a proposed discretionary decision; and
- Giving proper consideration to their representations.

Participation

The process of consultation will be more efficient if affected bodies are able to indicate, prior to the Crown determining its negotiating position, how any adverse effect on their interests might be avoided or mitigated in the development of the proposal for settlement of a claim. (In the subsequent consultation the Crown will then be able to demonstrate how it has dealt with their concerns.)

Approach

Seeking arrangements for affected bodies to appropriately participate in the evaluation of options, before a Crown negotiating position is formulated.

PART 2 : BODIES TO BE CONSULTED

While this paper deals with consultation with statutory bodies the duty to consult also applies to individuals who might be adversely affected by a proposal e.g. lessces of land in the conservation estate. The bodies primarily concerned (but not necessarily the only ones) are listed below.

Conservation Boards

These bodies have a jurisdiction over all areas controlled by the department but not generally over those controlled by an administering body (s.6M Conservation Act). They have conservation management planning and other functions.

Approach

Providing information and seeking advice from the Conservation Board if the claim is for an area of land in its jurisdiction.

Fish and Game Councils

These bodies have a jurisdiction over sports fish and game, including maintaining and improving the sports fish and game resource, and representing the interests and aspirations of anglers and hunters (s.26Q Conservation Act).

Approach

Involving the sports fish and game council for the area (either directly or through liaison with the conservation board) if the claim might affect its statutory land interests.

NZ Historic Places Trust

This statutory body has functions and powers relating to historic places, wherever they occur (Historic Places Act 1993). In particular it has the power to register places of historic significance, administers powers to protect archaeological sites, and is a Heritage Protection Authority under the Resource Management Act.

Approach

Involving the NZ Historic Places Trust in any proposals affecting historic reserves, registered historic places, and other places of historical significance.

Administering Bodies

These bodies include reserve boards, local authorities in which a Crown reserve is vested or which have been appointed to control and manage a reserve, managers of marginal strips, and any committee controlling a specific reserve or conservation area in a capacity akin to that of the other bodies listed.

Approach

If a claim affects land under the control of an administering body, involving that body in terms of its jurisdiction.

{It should be noted that this series of papers only deals with land claims. The same issue (the duty to consult) arises with other claims affecting the jurisdiction of some of these statutory bodies. In the case of national issues the Department would recommend consultation with national bodies (e.g. the NZ Conservation Authority) rather than regional bodies.]

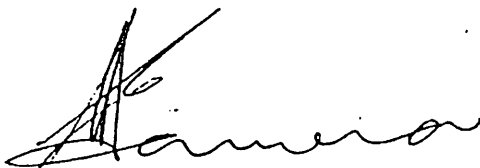
7 September 1993

Executive Management Team

PUBLIC CONSULTATION PROCESS

In its report of 26 August 1993 to the Director General on consultation with the public over the Waikuku claim, the North Canterbury Conservation Board passed a six point resolution. Resolution No 6 is attached to illustrate the perceived need for the public consultation process to start earlier than is the current practice. Admittedly, the methodology has an "experimental" feel to it and is but the second (Marlborough Conservation Board consultation on Takapourewa being the first) of its kind. Nevertheless, acceptance of the resolution will allow for a managed consultative process, rather than one which has the appearance of being suddenly sprung on an unsuspecting public. Moreover, this may address one of the concerns of environmental groups at not being involved in process terms as now appears to be the case.

For your information.

A handwritten signature in black ink, appearing to read 'Eru Manuera', written in a cursive style.

Eru Manuera
Director, Kaupapa Atawhai

Attachment: Resolution 6, an extract from the North Canterbury Conservation Board report to the DG dated 26 August 1993.

6. That the Crown should review the process it follows for public consultation in order to give sufficient time and information at the beginning of the consultation phase to allow for meaningful public understanding and comment.

A point expressed in many submissions, and an undercurrent in others, was their concern over the place of New Zealanders in the Crown - Treaty partner negotiations. There was concern that the proposal appeared as if from nowhere when it was announced by the Ministers last month, that there seemed to be so much agreement to it (by the Crown, Ngai Tahu and Waimakariri District Council) that it was in effect a fait accompli, and that there was a rush to gather public comment.

These concerns are shared by the Board. Not only was it the only body which was inviting public comment, but it was placed in a position, not of its own making, where it had to receive some criticism of its actions in calling for submissions within the time it did, and of considering the submissions so soon after the closing time for them. The Ministerial instructions about the timeframe for a response were not helpful, and in the Board's opinion contributed to some of the criticisms received about the process of Board and public consultation.

Another aspect of criticism of the process was that much additional information about the proposal's effects only emerged at a relatively late date, when the Ngai Tahu Maori Trust Board presented its submission at the public forum. People felt that they had insufficient time to digest and comment upon this new information.

It was good that the extra information was made available to the public. It would have been better if it had been provided earlier, preferably at the beginning of the public consultation period.

What this points to, in the Board's opinion, is an urgent need to review how the Crown takes what is essentially a very big step of starting with a privately negotiated proposal and turning it into a proposal which has widespread public understanding, strong public support, and which can serve to strengthen race relations in this country. In these terms, asking a Conservation Board for its views, which as it is a public body appointed to bring forward public viewpoints implicitly means asking the Board to gather public views, is dumping an awful lot on that Board. It is not really something which a Board, having regard to its statutory functions, can be expected to satisfactorily achieve, still less when operating under difficult time constraints. Asking the Board (and as a consequence the public) to look at only part of the total proposal compounds the difficulties. It should therefore come as no surprise that the process of consultation has not gone as smoothly as it could, most visibly demonstrated by the response of the North Canterbury Fish and Game Council.

Just how the wider process of public education and consultation should be conducted is beyond the brief of the Board, but lessons must be learnt from this exercise, so that they can be applied to the next settlement proposal.

Conclusion

It is appropriate to conclude this letter by repeating the remark made by one Board member at the end of the meeting, that the resolution that the Board has passed, the final one in its three year term, was in his opinion the most important.

LESSONS LEARNT FROM INVOLVEMENT IN THE PROCESS
TO RESOLVE THE TREATY CLAIM OVER TAKAPOUREWA
(STEPHENS ISLAND)

The Marlborough Conservation Board became involved in the process of assessing and advising on the proposals to resolve the Treaty of Waitangi claim over Takapourewa (Stephens Island) in December 1992. The Director General of Conservation wrote to the Board at that time asking for its advice, which it provided following its 25 May 1993 meeting.

At the Board's 27/28 July 1993 meeting, after reviewing the process, it was agreed that the Board would pass on its comments to the Director General and the New Zealand Conservation Authority. This is in recognition that this is the first time a conservation board has been involved in what is still an evolving process to resolve such treaty claims. The Board feels lessons can be learnt from its experience which may help other boards discharge similar obligations as effectively as possible.

Background

In 1988 Takapourewa (Stephens Island) became surplus to the requirements of the Ministry of Transport. Jim Elkington (the claimant) placed a claim on behalf of Ngati Koata iwi in 1989 over the island. Because of the good relationship between the iwi and the local Department of Conservation (DOC) staff, it was decided to proceed to mediation with DOC representing the Crown. This mediation commenced before the Marlborough Conservation Board was set up in late 1990.

In response to the Director General's request, the Board entered an intensive period of considering the proposals. The Board took approximately six and a half months from the time of the request to delivering its advice, although this included the summer break. The main events in this time were:

- 1 A special briefing for Board members by Department of Conservation staff 29 January 1993.
- 2 A special meeting in Blenheim including a public forum and in committee discussion at which the details of the public consultation process were decided 23 February 1993. The Board called for submissions closing 7 May 1993.
- 3 A public forum in the evening after the Board's 23 March 1993 meeting in Blenheim.
- 4 The Board chairperson attended a meeting of the Nelson Conservation Board 19 April 1993 at which the Takapourewa proposals were discussed.
- 5 The Board passed its resolutions constituting its advice at its 25 May 1993

meeting at Waikawa Marae in Picton.

Board members were provided with many papers and background briefing documents to aid their understanding of the issues. These included: the draft deeds of settlement and management and the draft plan for management, departmental briefing papers, and the Ngati Koata no Rangitoto ki te Tonga Trust's constitution. The major submissions and a sample of the shorter ones were sent to Board members after the closing date for submissions. The complete file of submissions was also available to some Board members immediately before the 25 May 1993 meeting. An analysis of submissions was prepared by the Board's executive officer as a Board paper for that meeting.

After the Board provided its advice to the Director General, Ngati Kuia appealed on a boundary issue to the Maori Appellate Court. Rangitane placed a counter claim to the island with the Waitangi Tribunal. The Minister recently announced that the proposals will be put on hold until these counterclaims are resolved.

Consequences for the Board

The time demand on Board members by this one issue was obviously a heavy one. Most other items were deferred from the Board's March and May meetings which meant the July meeting took an extra day to deal with a very heavy agenda. This issue was clearly of far greater moment than any other issue it had addressed in its first three years. It probably would not have been equipped to handle such a major issue any earlier in its term.

Some Board members also experienced unpleasant reactions from some members of the public as they went about their usual non-conservation board activities between meetings. This was intimidating and uncomfortable for the Board members involved.

Lessons Learnt from the Process

The Board acknowledged that it indisputably has a role in advising on the change of status of such a nationally and internationally important area. There are some matters of detail regarding the process that the Board feels could be improved upon:

- (i) It was agreed that Board members should have been offered the opportunity to receive copies of all submissions to study before the meeting held to discuss them.
- (ii) There should have been a longer time between the close of submissions and the meeting at which they would be discussed. The time from 7-25 May 1993 was not sufficient to process submissions, produce a summary and provide the opportunity to look at all submissions. The Board felt somewhat pressured by the haste generated by having so short a time to consider submissions.
- (iii) The Board was happy to have its executive officer produce the summary of submissions. There was some discussion about how independent of the Board

or Department the summariser should be, and it was decided that the executive officer was the appropriate person.

- (iv) It was suggested that submissions that arrived after the closing date should not be taken into account.
- (v) The Board found it hard to anticipate the wide interest the issue would generate. It was suggested that the call for submissions should have been advertised nationally, because of the New Zealand-wide interest in the issue. Submissions were received from all around the country as a result of a campaign through Royal Forest and Bird Protection Society newsletters. Concern was raised in some submissions about the lack of national advertising.
- (vi) There were difficulties in providing access to the information for the public. There has to be a better way of doing it. Conventional press releases and mention in public notices did not seem to go widely enough. Some people did not know the information was available, and there was insufficient time before the first public forum for people to have received and read the information package.
- (vii) It was suggested that the Board must be involved in some way earlier in the mediation.
- (viii) It was felt that each claim should be addressed on its own merits.
- (ix) It was felt that the success of the process was in part based on the Board's consensus-based approach. Board members remained open-minded and hard issues were debated openly both within and outside the Board's formal meetings. Everyone's input was valued and listened too, and most concerns were addressed in the Board's final recommendations.

The Board felt that, overall, the process was a successful one. It wants to emphasise that the process worked well and was largely well-managed.

Susan King
Chairperson
Marlborough Conservation Board

12 August 1993

Bryce

Kevin

Full paper / Guidelines for KAD

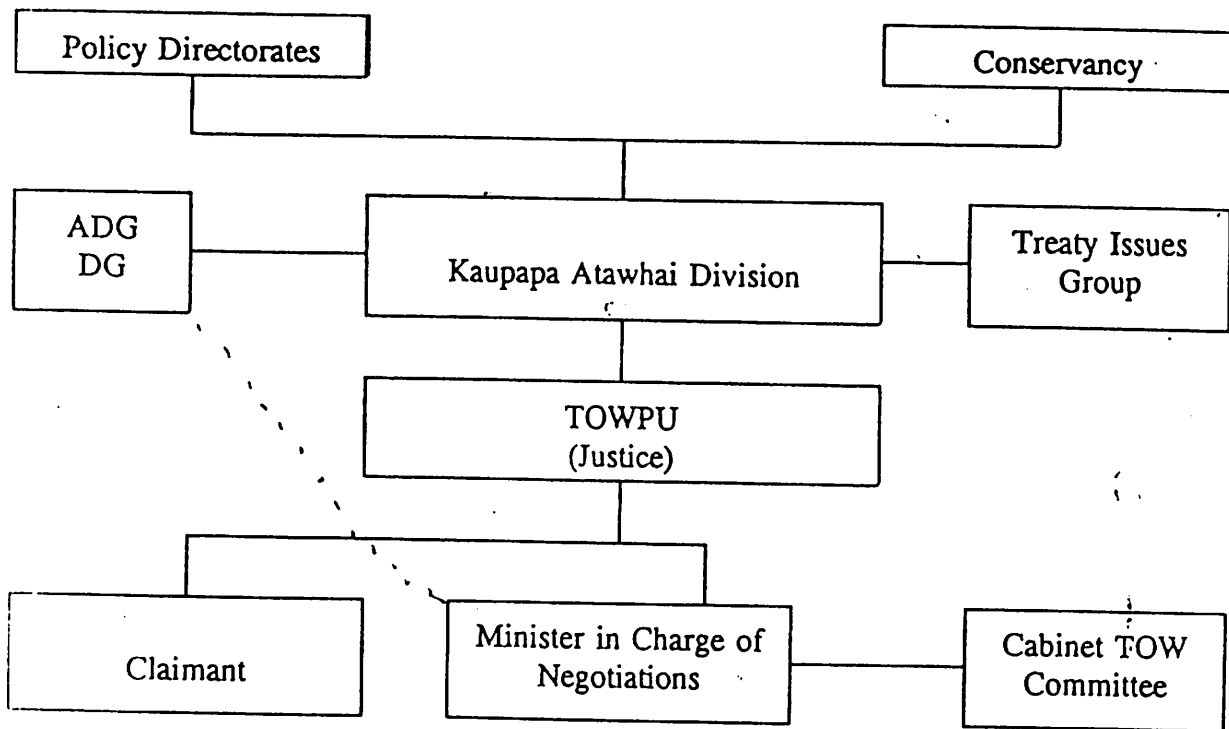
in the mail Hey!

NB. Main sit on both sides of the table eg. Ngai Tahu have 4 Kaupapa Atawhai members, incl Marka Wason, who came to @ town for NT.

(COORDINA.WD)

CO-ORDINATION WITHIN THE DEPARTMENT OF CONSERVATION

The diagram below explains how activities to do with Treaty of Waitangi claims are co-ordinated within the Department of Conservation.



CAM & POTTON

THE PRESERVATION ETHIC - A WESTERN MODEL

"Leave it as it is. You cannot improve upon it. The ages have been at work on it, and people can only mar it"

Theodore Roosevelt speaking on the Grand Canyon in 1903.

The philosophical and spiritual concepts that are embodied in the western model of wilderness preservation were refined from the late 18th century with the growth of the Romantic movement. Poets such as Wordsworth, Coleridge and Blake, painters such as Lorraine and Turner and philosophers like Rousseau, and later Thoreau, developed a philosophy concerning the individuals appreciation of the wilderness which led directly to the social movements that have resulted over the last 140 years in natural areas being set aside for complete protection.

Prior to the advent of Romanticism wild nature was largely regarded as both of utilitarian value for food, timber and medicinal herbs and also psychically a fearful place in which good and evil forces, largely beyond human control, played out their destinies. Although there was a vast oral and written tradition of individual and cultural appreciation of nature, over time western cultures (like all others) have cleared forests, drained swamps and killed wild animals beyond sustainable levels. The only parks or reserves created in classical and medieval times were designed to keep the game in and the peasants out, all at the whim of the ruling classes.

In contrast the Romantics recognised that while humans had developed the capacity to alter or destroy the natural order, the natural order had an intrinsic right to exist and that humans with their ability to reason and love, had as part of that order a responsibility to protect nature. Furthermore they felt that the deep responses of fear, awe and a compelling sense of the beautiful encountered by individuals in the wilderness were a spiritual necessity, especially in an increasingly secular and urban world. In wilderness existed a world beyond the powers of humans to create and yet essential to their imagination. Hence they combined their aesthetic appreciation of nature to intuitions of a moral and ontological order. Theirs was primarily a spiritual encounter in which they perceived that (wild) beauty is truth is good.

The Romantics developed this way of appreciating nature within the tradition of an emerging scientific method that revealed nature to be a self-contained harmoniously ordered system. Thus, although "scientific" findings have confirmed the need to protect species, ecological systems and natural processes in order to represent a baseline of evolution, it is appropriate to acknowledge the prime position of aesthetics and spiritual values associated with this European heritage of nature protection. This tradition of encountering beauty and goodness in large vistas of unmodified nature is self evident in most people's immediate responses to the estate.

It is no coincidence that the first fully protected national parks and reserves were created in countries like America, Australia, Canada and New Zealand where the necessary combination of democracy, Romantic culture and largely unmodified landscapes gave the means and vision to preserve natural places as the common heritage of all citizens. The fact that this positive feeling for wilderness became a legal reality however ultimately owed more to the dedicated politicking of preservationists like John Muir in the USA and William Fox in New Zealand than to philosophers, painters or poets. In 1864 Muir led the campaign that eventually created Yosemite State Park and paved the way for Yellowstone National Park. The legislative language of the Yellowstone Act was borrowed in wording and spirit by the creators of the Tongariro National Park in 1888. William Fox who had been in the West Coast of the USA and visited Yosemite played a significant role in the creation of Tongariro National Park and promoted the first protective Forests Act, which became a reality in 1877.

This paper is too short to allow even a summary of the development of nature protection in New Zealand. It is essential however for the department, conservation boards and the authority to understand and know well its genealogy, as at present it is virtually ignored. A culture that fails to recognise, and understand and acknowledge its past inevitably falls into capricious decision-making without even really knowing the reasons it makes decisions. By contrast, the

American Park system has shrines and displays at virtually every protected place giving the history of the fight to save the area and profiling the people involved. In NZ DOC's visitors centres give the impression that these places were created "ex nihilo", out of nothing.

An understanding of the genealogy of our protected places must encompass the interlinked stories of thinkers such as: Charlie Douglas, Pember Reeves, Peter Hooper; painters such as: Nicholas Chevalier, Petrus van de Velden, Rita Angus, Colin McCahon; politicians such as William Fox, Thomas MacKenzie, Alfred Newman, Harry Ell; scientists such as William Colenso, Leonard Cockayne, John Salmon, Alan Mark; lay activists such as A.P. Harper, Barney McGregor, Perriene Moncrieff, Guy Salmon, Gerry McSweeney. And undoubtedly the single most important element in the creation of the New Zealand preservation estate has been the interplay between public interest groups and the parliaments of the day. Such groups have been the Scenic Preservation Society, the Royal Forest and Bird Protection Society, the Royal Society, the Federated Mountain Clubs, the Fish and Game Council and the Maruia Society. Its a long whakapapa and New Zealanders are rightfully proud of it, though history will show that this rich success was only achieved after some long and bitter fights.

Having outlined the philosophy that is at the core of the western model of protecting nature, and having briefly pointed to the history of its development in NZ it remains to broadly

describe the key elements I see in the contemporary expression of this philosophy.

1. The aesthetic, moral and spiritual values derived from an encounter with unmodified nature are still seen as the primary reason for nature protection by the majority of the people.
2. There is a strong new focus on compelling scientific reasons for retaining the fullest range of indigenous biodiversity which is eclipsing a more single species orientation.
3. Re-creation in protected areas should be as much as possible on nature's terms and protected areas need to be managed as far as is possible according to the rhythms of unmodified nature.
4. Proponents of a protection ethic remain at odds with proponents of a conservation ethic of sustained yield management. The latter wish to "manage a resource" rather than promote the notion that there are some places that should be visited lightly and never touched, except in preventing threats to their existence.
5. The democratic and strong citizen involvement ideals that were germane to the origins and establishment of the protected estate are very much in evidence today and at times constitute a strong support (albeit at times "critical" support) for DOC.

Newly protected areas are still largely initiated by individual citizens or public interest groups.

6. Full, free and equal public access to the conservation estate remains an important ideal.

VISITOR ENCOUNTERS ON THE CONSERVATION ESTATE

At this moment the conservation estate is undergoing a rapid escalation of visitor use, both in numbers and variety of uses. While it is commonly asserted that there is no useful distinction, for planning purposes, between recreationalists and tourists, amateurs and professionals, or local and overseas visitors, there is nonetheless an urgent need to describe and clarify the quality and type of encounters individuals may reasonably hope to experience from a visit to our natural landscapes. This need to clarify visitor hopes and expectations is necessary to ensure that competing uses and users do not either adversely affect each other, or unduly clash with the traditional recreational purposes of the conservation estate.

This paper sets out firstly to describe the Romantic tradition of recreation, which is deeply embodied in the preservation ethic, secondly to describe how this tradition is under threat from other ideologies, and thirdly to hint at a mode of planning which may be the most appropriate way of compromising between present conflicts.

RECREATION AND THE PRESERVATION ETHIC

The notion of preserving land for its intrinsic value came directly from the Romantic movement in western philosophy (late 18th Century). Poets such as Coleridge and Wordsworth, and philosophers such as Thoreau, postulated that while humans had

developed the capacity to alter or destroy forever the natural order. the natural order had an intrinsic right to exist and that humans with their ability to reason and love had, as part of that order, a responsibility to protect nature. Furthermore, they also recognised that encounters with unmodified nature brought a sense of awe and beauty that was spiritually uplifting and beyond the power of humans to create. Hence, they combined their aesthetic appreciation of nature to intuitions of a moral and ontological order. Theirs was a spiritual encounter in which they perceived that "beauty is truth is good".

The Romantic movement had an enormous affect on the popular consciousness of rapidly modernising societies and lay people became imbued with its concepts. Thus, while the growing scientific and democratic values of western society played important roles in determining some characteristics of the preservation ethic, there is no doubt that aesthetic, moral and spiritual values were the most important in determining the preservation ethic our culture has inherited. In fact this tradition of the inherent beauty and goodness of large tracts of unmodified nature is self-evident in most people's immediate response to nature. They express this tradition whenever they think or say of the conservation estate: "it's so beautiful", "it's awesome", "it's great to get away from it all", "it's so peaceful, "I feel good when I'm in such a stunning place". And it is quite notable that despite the educational emphasis on the scientific values of reserves in the 20th Century, the populace

far more frequently assert the aesthetic and ethical values they encounter when standing before the conservation estate.

A central tenet of the Romantic tradition was the need to encounter nature as far as possible on her own terms. Romanticism recognised that the human experience was being squeezed into greater and greater levels of human constructed controls through the ability of human technology to alter time and space, and the increasing social and political controls western civilisation was bringing about with education, and the "professionalising" of institutions and activities. This was not perceived in itself to be bad but rather an inevitable and at times delightful consequence of civilisation. However the Romantics argued that humans needed a powerful antidote to the controls of civilisation, a place and state of mind where the individual's imagination could soar beyond its social conditioning. And one antidote was wilderness. Hence the value of "re-creating" in wild places was philosophically and etymologically centred in the notion of recreation. Today these qualities in the word are still echoed in phrases such as "I'm going tramping for the weekend to get away from it all" or "when I get out in the National Park I forget the world and all my problems." "I'm going there to recharge myself". Edward Abbey, an outspoken writer on wilderness values has given them a political, as well as personal edge by asserting that he always wanted some part of his landscape to include a wilderness to run to when the thought police arrived at his door.

In contemporary society the commercialisation of all activities, including those as personal as sex, and virtually all forms of outdoor recreation, perhaps adds a new and alarming perspective of control, and further argues the need for the antidote of wilderness. When I was on the Nelson City Council a delegation of parents opposed a waterslide at Tahuna beach because they simply didn't want the beach to become yet one more place where they had to put their hands in their wallet for the children's experience of a nature playground. They argued that some recreational values should simply not be commercialised, and that some wildernesses should be as close as their backyards where they and their children could escape to.

NEW IDEOLOGIES THREATEN "RE-CREATION" IN WILDERNESS

A clear distinction can be made between an encounter which is commercialised and/or professionalised, and one that is not. It is a distinction primarily based on the difference between expectation and hope. Hope exists in a context of faith and personal relationship and is in a real sense both subjective and unpredictable. On the other hand expectation exists in a context of an impersonal objectivity where a certain outcome ("product") is expected to be delivered at a fixed cost. For example when you are ill you may hope and have faith in your own power of recovery and your neighbours and friends' care or alternatively you may seek out a health care professional and expect him or her to both diagnose and treat your illness in an impersonal and objective

1

manner. Clearly in the latter case there remains a personal relationship between a good health care professional and the patient, nevertheless the context has been objectified, and your health care has become a "product" to be delivered from an outside input. More and more of our social world is being given over to a world of created expectations (advertising is a powerful tool) where professionals deliver products and create product monopolies either by law (eg schooling is compulsory, only doctors can dispense drugs etc) or by redesigning the environment to a particular product's needs and qualities. For example the Tasman Valley and the upper Fox and Franz Glaciers are now packaged as a visual product that is expected to be experienced from the air and from one snow landing.

There are other ways to describe the fundamental differences between a self-regulated encounter on nature's terms and a commercial and/or professional encounter in a natural setting. In the former the encounter will contain a high level of self autonomy and/ or help from friends in which mystification and enchantment loom large in a relatively uncontrolled context. By contrast in the latter situation, there is often reliance on a professional and a recreational product that is demystified and disenchanting so that the comfort and predictability of the package is almost guaranteed.

Where traditional wilderness recreation is most threatened by the packaged product is when the new ideology creates an exclusive

monopoly. As I have alluded it is impossible for a recreationalist to avoid the impact of ski planes and helicopters in the Tasman Valley or Fox and Franz neves. On fine days their dominance is virtually complete. The seduction of new "product" is also a strong factor militating against the protection of traditional values. Individuals are hardly likely to tramp beside a road, or walk beneath a plane when the option is there to positively distort time and space and experience a genuine "thrill". By allowing such a product in a natural setting the imagination and motivational structure of people is in threat of being monopolised. Though these distinctions may seem either overly pedantic or unnecessarily "in the mind", it is primarily "in the mind" that wilderness is at threat from these socially driven changes. People either wittingly or unwittingly express this in comments such as "I've got to get away from it all", "Abel Tasman used to be great but now it's wrecked", "DOC is incapable of saying No", "DOC and the tourist board are turning our parks into Disneyland", "On a sunny day Mt Cook is noisier and busier than Queen Street". While this latter comment is usually viewed as hyperbole, it is notable that Yosemite National park in the high season now caters for 3320 people per square mile, which is a greater density than the city of Houston.

PLANNING TO PROTECT APPROPRIATE ENCOUNTERS

It is hopefully apparent from the preceding thoughts that I believe that clear distinctions can be made between amateur and

professional, non-commercial and commercial, highly controlled and uncontrolled, manipulated and unmanipulated use of the conservation estate. It is not a distinction between classes of people (eg tourist or recreationalist) but rather between access to types of encounters (eg a traditional wilderness encounter of hope before the great unknown, or a commercial expectation of a wilderness product). At times you, I and virtually all individuals who use the estate will opt for one or other type of encounter. The acute problem facing recreational management planners is that the development necessary to create some encounters can be quickly in conflict with, or erase the opportunity for others.

Clearly in a pluralistic, multicultural and democratic society there must be a series of compromises made in planning recreational possibilities on the DOC estate. No severe value judgments need be made between the intrinsic worth of competing uses but the department must recognise, protect and advocate traditional recreational values because it is at the base of the reason for their existence. DOC lands are held in trust so that all people have the option for traditional wilderness recreation. It is an option that is being rapidly eroded in most other public and private lands held in trust (or otherwise) for recreation.

However while national parks and reserves have been the traditional domain of the 'do it yourself' Kiwi recreating in unmodified nature, these areas have also a long association with

commercial sports (eg downhill skiing), professional services (eg the high guiding tradition at Mt Cook) and tourist roads and facilities (eg Milford Road and hotel). To date planning to accommodate these competing uses has been haphazard and spasmodic. This laissez faire attitude must not continue if competing use advocates are going to cooperate. At this time DOC manages 725 commercial concessions on its estate, and there are over 300 new concession applications before it. DOC also faces a potentially vast increase in overseas visitors, many of whom expect New Zealand wilderness to be one of the world's last great "get away from it all" venues in the first world.

Planners must recognise that only by a more sophisticated and holistic approach will they meet some of the "appropriate" recreational encounters individuals need from the estate.

1. Planning must distinguish not between types of people who visit but primarily between types of natural encounters available in defined areas.
2. Defined areas must be approached and planned for on a National Recreational Opportunities Spectrum style of planning based on "encounters" rather than a purely "permitted activity" basis

3. This holistic approach must have a macro element, eg protecting Aspiring National park or the fiords other than Milford and Breaksea as less modified, less concessioned, less used areas because places like Mt Cook and the Fox and Franz Glaciers and Milford Sound are highly modified in "encounter" terminology. It also needs a micro approach because the desire to feel oneself in silence and solitude before unmodified nature can be experienced at low tide far out on a sandspit, or just 10 minutes into the bush from the road end.

4. The traditional recreational voice and the tourist industry must have open dialogue and show real compromise if they are to accept the outcomes of such planning. No doubt the most intense debate will centre on the great visual and imaginative icons of our wilderness such as Mt Tongariro, the major glaciers, Mt Cook, Mitre Peak and the traditional recreational journeys eg. the great walks, golden sands of Abel Tasman.

CRAIG POTTON



NEW ZEALAND FISH & GAME COUNCIL

To : NZFGC
FGC's

11 March 1984

**COPY FOR YOUR
INFORMATION**

Jonis de Bris
Public Awareness Manager
Department of Conservation
P O Box 10-420
WELLINGTON

Dear Jonis

PARTNERSHIP PLAN - NGO MEETING

I came away from yesterday's meeting feeling that exploration of the partnership notion has a very long way to go before it could ever hope to become a popular concept. While I would like to think I came to the meeting with an open mind I certainly left feeling a tad on the angry side, and convinced that if such meetings are going to make any progress then Bruce Mason should be present and the Department should quickly get on with preparing a response to his 'partnership' paper.

I suppose I also found the tabling of Cindy's questions somewhat invasive, in that we all require more unambiguous information on Maori expectations for the future before they could be answered in a useful way. To push for answers now could be quite counterproductive, simply because the general perception is that Maori are motivated by self-interest, whereas the NGOs believe themselves to be motivated by public interest.

If Maori want public support for their expectations for the future then they are going to have to come out into the public arena and honestly and openly seek it - in a manner that the public can easily understand.

The notion that all such matters are the confidential preserve of the Treaty partners, Maori and the Crown (whoever the latter might be), is simply the surest way of invoking feelings of public opposition, and even resentment. My personal view is that Maori are in the process of making a major tactical blunder, and one which will only push New Zealand more towards republican thinking. To my mind

W B Johnson
Director

2 Jarden Mile, Ngauranga, Wellington
P.O. Box 15-141, Wellington, 4
Telephone (04) 499-4767
Facsimile (04) 499-4768

there is a huge sleeping giant out there that is beginning to wake up - and while that in itself could be OK, I get the distinct feeling it is being woken up by the protestations of Maori, and not its own choosing. There is now every risk it will get out of the wrong side of the bed!

The irony in all of this is that because the NGOs are the only organised groups that have large public constituencies and generally promote 'public' principles, they are potentially the strongest allies Maori could ever wish for, as agents for public support. The NGOs have proved on countless occasions that they can motivate the expression of 'public opinion', yet Maori seem determined to marginalize them. Maori need the services of a public awareness manager, and need to put their case in the language and style of their target audience, and be prepared to answer questions in like manner. And because New Zealand is 150 years on from the Treaty, Maori need to be mindful of what has happened in the intervening years, and become less reliant upon romantic recollections of the past. Above all they need popular public support.

Last year a colleague and I sought to offer some advice to the New Zealand Police on its then proposed firearms campaign, which was intended to trigger the return of firearms owner licensing (being distinct from the registration of actual firearms alone), with particular attention to military styled semi-automatic weapons. The NZ Police chose not to take that advice, and instead ran a campaign that took an aggressive and accusatory approach to bona-fide firearms owners - with the inevitable result that many MSSAs simply went underground.

The significance of this example is that the Police were not in the position of knowing where all the firearms (and especially MSSAs) actually were in New Zealand, and therefore were reliant upon the co-operation and support of firearms users. They were not in a position to demand, but only to ask.

In many respects I see Maori in exactly the same position, 150 years after the Treaty was signed. They want something that has been made far less achievable by virtue of 150 years of multi-cultural nationhood. While they feel they have the right to 'demand', the evolutionary reality is that they can probably only 'ask' - as reflected in the fact that the Waitangi Tribunal only makes recommendations, and not binding judgements.

New Zealand is now governed by a House of Representatives, comprised of people who are creatures of public opinion, and while Maori have to date largely been able to capture the senior representatives by arguing that they should move into "Crown mode" for the purpose of private consideration of Treaty matters, I personally doubt the sleeping giant will countenance that once it fully wakes up.

What I am endeavouring to say in a somewhat long-winded and anecdotal manner is that the future for Maori recognition lies with Maori themselves, talking to their fellow New Zealanders as just that - equal fellows, and not looking upon them as competitors, and persons of lesser status with lesser rights. Ngati Pakeha feel for this country too.

Perhaps we could talk about this in a less formal setting some time. You probably know that Mike Britton has come to work with us, and we would gladly stand the price of a lunch if you would like to think aloud some time.

Yours sincerely

A handwritten signature in cursive script that reads "Bryce Johnson".

W B JOHNSON
Director

**COPY FOR YOUR
INFORMATION**

Conservation Connections

NGO Link

AN ENVIRONMENTAL NEWSLETTER FOR NGOS

Issue No 1
MARCH 1994

15 MAR 1994

DOC'S PARTNERSHIP PLAN DISCUSSED

DOC's Iwi Partnership Plan was the subject of a useful discussion with national NGO representatives in Wellington on 10 March.

DOC had requested the meeting to discuss the terms of reference for the Partnership Plan and dialogue between NGOs and Iwi Maori.

Representatives from Greenpeace, Federated Māori Clubs, the Fish and Game Council, National Council of Women, Forest & Bird, the Deerstalkers Association, the Maruia Society and WWF attended the meeting.

Atawhai Ruamano

The Partnership Plan is one of six strategies being developed by DOC as part of a strategic intent programme called Atawhai Ruamano (Conservation 2000). Other strategies are the Biodiversity Plan, Historic Resources Strategy and the Visitor Strategy (the three key conservation results), and the Public Awareness Strategy and the People Plan, which with the Partnership Plan, focus on the "people changes" required to achieve the key conservation results.

Terms of Reference

The Partnership Plan is intended to help focus Iwi on how the Department sees its job, to gain the trust of Iwi, and to enable Iwi to be involved in conservation from their own perspective.

The draft terms of reference for the Partnership Plan Steering Group are as follows:

1. Developing a Partnership Plan including linking the work on this document with key policy issues such as treaty claims and natural resources and contributing to those policy issues linking the Partnership Plan and the Kaupapa Atawhai Operational Plan.
2. Overseeing the initial implementation of the Partnership Plan including contributing to key policy issues and other Atawhai Ruamano strategies and developing guidelines where necessary.
3. Fostering models of effective partnership that are achieving specific conservation goals at the local and regional level and overseeing the funding of Tikanga Atawhai projects.

1. Taking initiatives to develop a mutual understanding amongst Maori and Pakeha of each other's perspectives on conservation, with a particular emphasis on the views of Iwi, conservation board members and other stakeholders.

Issues of Concern

NGOs identified a number of issues for discussion. These were:

Partnership

- What is meant by partnership?
- Who are the partners?
- Is partnership seen as being exclusively between the Crown and Iwi?
- Does the Crown represent the public, including NGOs, and if so, how does the Crown consult?
- Is there a difference between the partnership with Iwi and the partnership with NGOs and sector groups with a stake in conservation?

Public Involvement

- Can the public generally be involved in the development of DOC's partnership plan?



What are the issues that underpin public debate?

Major Issues/Issues

• Identify common ground between the perspectives of Māori and the Crown

• Identify issues to be explored

Treaty Claims

• What is the relationship between Treaty of Waitangi claims and DOC's partnership plan?

Process and Time Frame

• What is the process for preparing and adopting the plan, and what is the time frame?

Accountability

• What is the relationship between the partnership plan (and the other Māori Resource strategies) and the responsibilities set out for the Department, the NZ Conservation Authority and Conservation Boards in the Conservation Act and other strategies (eg policy statements, conservation management strategies)?

What is the View of NGOs?

Greenpeace suggested that before discussing these questions, NGOs needed to identify their own view on the following:

- Do we should warrant a special relationship?
- How do we ensure retention and expansion of the commons (publicly accessible conservation areas) for all people?

• How do we link to the Treaty of Waitangi? How do we link to the Conservation Act?

• How do we link to the Department's partnership plan?

Accountability Questions

• How do we ensure that we can address all the questions raised in the partnership plan? How do we ensure that the plan is adopted and implemented? How do we ensure that the Department's work also provides answers to Public Interest NZ's recent question paper on partnership plans?

DOC's Responsibilities in Relation to the Treaty

Copies of a recent NZ Conservation Authority report on DOC's responsibilities under section 4 of the Conservation Act were distributed at the meeting, to accompany the report on this

• Section 4 of the Conservation Act requires that the Act is interpreted and administered so as to give effect to the partnership of the Treaty of Waitangi.

• The High Court is currently considering whether DOC's responsibility under section 4 extends to the other Acts in the First Schedule of the Conservation Act for which DOC is responsible.

• In any event, DOC has duties under the Treaty. These duties are those which the Crown, as a treaty partner, should meet as a matter of honour (although not legally enforceable).

While seeking to give effect to the principles of the Treaty, any decisions must also always promote the conservation of New Zealand's natural and historic resources, which is the primary purpose of the Act.

• There is an increasing body of opinion in favour of the use of Treaty principles. Four important principles can be identified as having application in many situations. These are:

• Act reasonably and in good faith (partnership principle of co-operation and shared obligations)

• Make informed decisions

• Avoid action which will prevent redress of claims

• Governments must be able to govern.

• The "partnership" principle is a shorthand way of describing the elements which the Treaty envisaged would define the relationship between the Crown and Māori. These elements include notions of mutual respect, awareness of the other partner's views, a willingness to accommodate those views, fairness and good faith. In short, co-operation.

NZFO Link is produced by the Public Awareness Unit of the Department of Conservation, PO Box 10 420, Wellington (fax (04) 431 3043).

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monopoly. As I have alluded it is impossible for a recreationalist to avoid the impact of ski planes and helicopters in the Tasman Valley or Fox and Franz neves. On fine days their dominance is virtually complete. The seduction of new "product" is also a strong factor militating against the protection of traditional values. Individuals are hardly likely to tramp beside a road, or walk beneath a plane when the option is there to positively distort time and space and experience a genuine "thrill". By allowing such a product in a natural setting the imagination and motivational structure of people is in threat of being monopolised. Though these distinctions may seem either overly pedantic or unnecessarily "in the mind", it is primarily "in the mind" that wilderness is at threat from these socially driven changes. People either wittingly or unwittingly express this in comments such as "I've got to get away from it all", "Abel Tasman used to be great but now it's wrecked", "DOC is incapable of saying No", "DOC and the tourist board are turning our parks into Disneylands", "On a sunny day Mt Cook is noisier and busier than Queen Street". While this latter comment is usually viewed as hyperbole, it is notable that Yosemite National park in the high season now caters for 3320 people per square mile, which is a greater density than the city of Houston.

PLANNING TO PROTECT APPROPRIATE ENCOUNTERS

It is hopefully apparent from the preceding thoughts that I believe that clear distinctions can be made between amateur and

c to
 Bruce
 Moran
 ↓ PANZ
 Kevin Smith
 Forest & Bird

initial input for the map revision had been gathered from recreational users. He said this input had been passed onto the Department of Survey and Land Information. John Ombler said the final draft was referred back to the Napier office of the Department of Conservation later in the year. He explained that departmental staff and consultants were involved in examining the final draft revised map.

Schedule of Matters Arising from the Minutes.

7. Schedule of Material Forwarded to Board Members Inbetween Meetings

Audrey Severinsen asked whether there were any roadsides, railway margins and waterways which should be claimed in terms of their conservation values. John Ombler replied that the protected natural areas survey of the Pahiatua Ecological Region completed by Dr John Finlay had identified some rare plants on road verges. He stated that protection of these areas would be undertaken as part of the protected natural areas programme's implementation stage. Bill Carlin said the Railways Corporation had been advised sometime ago by the Department on a national basis of all railway land that the Department considered had conservation values. He indicated that with sale of the Railways Corporation and handing over of surplus railway land to the Department of Survey and Land Information for disposal it could be an appropriate time to register the Department's interest again. Bill Carlin agreed to follow up on this matter with the Department of Conservation's Head Office.

Audrey Severinsen suggested that the North Canterbury Conservation Board's paper titled "Roadsides, Railway Margins and Waterways (Forgotten Material Habitat)" be circulated to all district councils. It was agreed to discuss the issue further at the next Board meeting with a view to developing a strategy to promote the paper to district councils.

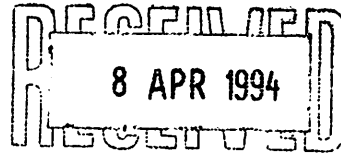


Heitia Hiha referred to Public Access New Zealand's latest newsletter titled "The Principle of Partnership and the Treaty of Waitangi" and asked whether the organisation paid for its distribution. The Secretary replied that the newsletter is received, via a stamped envelope addressed to the Board, on a regular basis from Public Access New Zealand. Heitia Hiha felt the newsletter was interesting in that it represented the arguments of the "other side" from iwi, however, he found its contents to be full of rhetoric. Peter Pharazyn voiced his support for Heitia Hiha's comments. Alan Willis felt that summer holiday programmes in Hawke's Bay and Palmerston North could perhaps benefit if information about them was released a bit earlier in the year. He considered the newsletter - Target Taupo was an excellent communicating tool produced by the Department of Conservation for hunters and anglers in the Tongariro/Taupo Conservancy.

The Board received the Schedule of Material Forwarded to Board Members Inbetween Board Meetings.

Minutes 25/2/94 mtg
 Rangitikei / H Bay Cons-Board.

22 November 1993



TO: EMT
Kaupapa Atawhai Division

SUBJECT: RECORD OF EMT/KAUPAPA ATAWHAI DIVISION WORKSHOP
ON 3 NOVEMBER 1993

1. Introduction

This report has been compiled by me as facilitator for the workshop, based on the report-back sheets from the various group sessions during the day. I should emphasise that in some sessions participants were asked to explore the views or positions of others, and to "think out loud". This report is therefore a resource rather than a policy paper. It is a record for participants and not any sort of official document.

2. Expectations

The purpose of the workshop was to identify ways the Treaty partnership could be implemented in the conservation context. Participants identified the following expectations:

- (a) that we develop a clear statement of where DOC is at in relation to the Treaty, for our own use and for use in discussions with staff, iwi and NGOs;
- (b) that we have a clear view of DOC's role in Treaty claim resolution and the context of our own involvement (in relation to the overall intent of the Treaty and social issues);
- (c) that we have a more detailed statement of the respective interests of iwi, the Department and NGOs, including areas of agreement and disagreement between the parties, as a basis for developing models; and
- (d) that we articulate a commitment to partnership, that we move beyond rhetoric and that a process for partnership development is underway.

3. Identification of Interests

We identified the respective interests of the Crown, the Department, NGOs and iwi as follows:

(a) NGOs

We identified four NGO sectors, namely those focused on ecology, harvest, recreation and historic heritage. A fifth focus was people off-site, who are affected by the conservation estate (eg downstream, downhill).

Bottom-line areas for NGOs can be described as for concern for the public and concern for protection. Concern for the public includes a view that public ownership is the best option for the benefit of all New Zealanders and for accountability and that public control of use rights is essential. The concern for protection takes a number of different forms depending on the interest group involved, but includes protection of business opportunities, including exclusive occupation, protection of intrinsic natural values, protection of historic values, protection of recreational opportunities and protection of harvest/use rights.

Groups focused on ecology want to protect use for scientific purposes, collection of specimens, gardening and protection against pests. Those groups focused on harvest, want protection of use in relation to food, sport, fishing.

Those focused on historic heritage want protection of use for archaeological digs.

It is a feature of all groups that they do not easily acknowledge the use rights of others.

Generally speaking, NGOs do not trust any other form of ownership, have a feeling that no one can be trusted, that everything has been fought for and must continue to be fought for, that no risks should be taken with alternative models and that the DOC estate is their creation in which a major investment has been made that should not now be allowed to be exploited by others. To some extent their prime responsibility is seen as to the natural world rather than to the human race. There is some development, particularly overseas, towards broad sustainability as the focus for conservation, but that is not a traditional part of the local environmental scene.

There is some support amongst NGOs for the righting of injustices under the Treaty, but this is seen as a general social responsibility and not necessarily one involving conservation land. They tend to see partnership as someone else's problem, although they are prepared to see (and in some cases welcome) iwi involvement in processes, accept consultation and are open to more in principle, including changes to institutions. They are open to valid mechanisms for partnership which include them. Their ultimate concern is one of accountability and protection, but this is hard to separate from their concept of continued public ownership.

(b) Government Departments

The Crown's bottom line can be illustrated by a triangle comprising three separate interests of public harmony, governance and integrity. Public harmony includes public acceptance of Crown actions (including a concern not to create further injustices), relative harmony within Government, durable and sustainable solutions, exclusivity (partnership only with iwi Maori and not extended into a broader partnership with others) and social justice. The integrity bottom line includes self-respect, justice, international responsibilities and pressures, being seen to act, to create a base for achievement and to maintain a base for continuation in Government. The governance bottom-line includes an unchallenged right to govern and ingredients include legality of any actions, solvency (efficiency and effectiveness), consistency with the ideological model (currently free market) and manageability of process (currently mainstreaming).

The importance of political survival in the considerations of any government were noted, but there was clearly also a concern for social justice, in particular improvements in the economic, health, educational situation of Maori. The Crown has a commitment to Treaty claim settlements, but is aware that some elements of the notion of partnership, as expressed by some iwi, are likely to find wider public acceptance. The courts have stated that the Crown has a fiduciary duty to redress wrongs.

There is a commitment to on-going Maori involvement in institutional ways in the decision-making process, but not to the extent that this impedes the Government's ability to govern or to be re-elected (ie democratically accountable).

(c) Iwi

It should be noted that iwi, like NGOs, are not a unified group. There are approximately 60 different iwi and there are further divergences amongst hapu within iwi. The bottom line of iwi is essentially:

- *Claims* -
An affirmation of their identity with their rohe, with resources to go with that and the right to use those resources (not necessarily exclusive management and control).
- *Partnership* -
A large say over what happens to land and resources in their rohe. This must involve REAL consultation and involvement.

Iwi aspirations in relation to conservation land management may be unrealistic in view of their resources. There is no guarantee that iwi would be able to own and manage such lands to meet the goals of protection and sustainable use. They must, however, have ACCESS AND USE of resources in their rohe. This is critical to the maintenance of Maori culture. The bottom line of iwi can move from ownership to "a large say". There is not automatically a problem in the relationship with NGOs (eg current co-operation with Taranaki).

The challenge for DOC is to win the confidence of iwi, which is an issue of both attitude and approach. Any proposed steps must be believable to iwi.

Iwi Maori, being treated as tangata whenua with mana whenua, are looking for economic opportunities, although the conservation estate may be the wrong place to look, since management of conservation land without assistance would more likely land them in debt. The justice issue remains a very big issue.

Iwi want the Maori conservation ethic (Tikanga) both recognised and revitalised. Particularly amongst younger people, the Maori conservation ethic is broadening into a wider environmental awareness and vision. This is not limited to the particular iwi but has a national perspective.

There is a desire to move out of the grievance mode but this is very difficult in view of the attitudes of other parties and there is a need for grievances to be addressed. An entrenched grievance mode makes it difficult to pursue effective negotiations, because iwi are looking for fish hooks which will make solutions fail. (This is not dissimilar to the attitude of NGOs.)

Iwi Maori want their waahi tapu protected.

(d) DOC

DOC's bottom line in relation to conservation and partnership can be described as follows:

- *Conservation* -
This is our legislative mandate and we must maintain and enhance the conservation estate. Our actions must be consistent with government policy and procedures and we must provide public policy which generates people's support.
- *Partnership* -
We are looking for a partnership with iwi Maori that will achieve our conservation objectives. We want to add the Tikanga dimension in order to enhance conservation. Our conservation bottom lines will be enhanced by consultation and participation, and through the articulation and

integration of the iwi position. We want Treaty claims to be resolved justly and in ways which assist our bottom lines. The claims resolution process must be one which is seen to separate DOC from the judgements of justice and redress (our role being to articulate conservation values, provide information, avoid undermining settlement or justice through our own actions, such as prematurely dealing with additions to national parks of land under claim).

DOC has faced a problem through Government policy not being clear and procedures still being in the stage of development. There is a need for clarity with regard to our values and purposes in relation to Treaty negotiations. We are currently stuck in the claims process and this is hampering our ability to develop partnership and can destroy existing relationships with iwi. It should be clear that we are not the arbiters of Treaty claims. The target of full settlement of claims by the year 2000 presents problems, as there is a tendency to disregard complexity and to disallow time required to work issues through with iwi.

DOC needs to assist in the dialogue between NGOs and iwi, we need to be well prepared before we propose solutions and we need to be mindful of the need to retain the survival of a central conservation organisation and the health and security of our people resources.

4. Some Options

One approach may be to separate out three distinct areas of involvement. The first relates specifically to Treaty claims, where our responsibility continues to be to advocate for conservation and where we are likely to continue to advise that the ownership of lands administered by DOC for conservation purposes should not be transferred. The second area is management, where we are able to take steps to recognise iwi as the tangata whenua and as Treaty partners. This may feed back into the process of Treaty settlement. The third area is development. It may be possible for the Department to provide assistance to iwi to develop their role as natural resource managers within their rohe, ie conservation development (this would need additional resources). This could apply to all iwi Maori, or specifically to groups who have been unable to meet the criteria for transfer of ownership in exceptional circumstances. We could, for example, assist in the establishment of eel fisheries or provide planning assistance under the Resource Management Act. We could share our body of knowledge regarding ecosystems and organisation. We could contribute to the process of conservation education through whare wananga.

5. Elements of Partnership

All DOC functions are potentially areas of partnership with iwi but they can be divided into elements of varying importance as follows:

Most Important

- (a) Cultural harvest;
- (b) Cultural materials;
- (c) Wahi tapu;
- (d) Marine reserves;
- (e) Use of poisons;
- (f) Restoration of habitats;
- (g) Commercial opportunities;
- (h) Sewage/pollution;
- (i) Research priorities;
- (j) Planning priorities;
- (k) Interpretation (Maori);
- (l) Office location and structure; and
- (m) Conservation boards.

These are mostly policy areas with some operational content.

Important in Some Respects or May be Important

- (a) Wild animals;
- (b) Office location and structure;
- (c) Interpretation (non-Maori);
- (d) Sports fishing;
- (e) Land transactions and acquisitions;
- (f) Marine mammals; and
- (g) Education and summer programmes.

Least Important

- (a) Fire;
- (b) Recreational hunting;
- (c) Pakeha historic buildings;
- (d) Hut and track maintenance;
- (e) Search and rescue;
- (f) Weed control;
- (g) Some threatened species.

It should be noted that very significant operational areas fall in to the maybe or least important categories. These probably cover about 60% or more of DOC's funding.

6. Detailed Options

A brain-storming session produced a range of options, which were then divided into practical and philosophical proposals, and ranked in terms of our ability to do them now, to work towards them with some assistance from others, to achieve only with the assistance of others, and those that are in the very hard basket.

Things We Can Do Now

Practical steps we can take now include: renewed dialogue, provision of cultural materials, consultation, employing Maori, articulating Tikanga, accepting iwi involvement in priority setting, improving communication, and contributing to the resolution of Treaty claims. The philosophical steps we can take now include recognition of the Maori conservation ethic, and developing a greater commitment to partnership.

We can take Maori values into account in both a practical and a philosophical way.

There are some practical and/or philosophical issues which range in difficulty from things we can do immediately to things which are very hard depending on the degree of their implementation. These include the provision of leadership, the acceptance of iwi vetoes on some issues, Maori participation in management, co-management of the Department or conservation activities, and the acceptance of iwi authority for decisions on some issues.

All the above can be covered under three broad headings of:

- (a) Communication/Dialogue/Consultation;
- (b) Incorporating Maori Into Our Structures/Processes/Decisions/Staffing;
- (c) Leadership/Commitment/Vision.

Things We Can Do With A Little Help From Others

Practical steps include helping iwi with the implementation of conservation priorities, and resourcing iwi to participate. A philosophical step is accepting an iwi contribution to partnership. Some practical and philosophical steps fall partly in this category and partly in the category of 'things we cannot do without others'. These include the establishment of committees, the reconciliation of the Pakeha and Maori conservation ethics, and ensuring that there are mutual benefits from the partnership.

The Things We Can Only Do With the Agreement/Help of Others

Steps we can take that require the approval, agreement or help of others include the development of an accord with iwi Maori, and the provision of resources and skills for Maori development. A philosophical step is the development of a vision of partnership. Some steps fall between this category and the very hard basket. These include the development of co-ownership concepts, transfer of title in particular cases, and the resolution of issues relating to waahi tapu.

Things That Are Very Hard To Do

Steps in the very hard basket include the achievement of mutual respect, and the resolution of issues relating to cultural harvest. They also include the more difficult end of the spectrum in relation to accepting Maori veto on some decisions, co-management, and accepting Maori authority for certain decisions.

7. Our Approach in Talking with Iwi

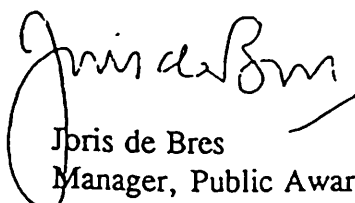
Our approach to talking with Iwi should be based on the following:

- (a) DOC does not have the power or the responsibility to resolve Treaty claims, although we are involved to the extent that claims relate to land administered by us for conservation purposes.
- (b) Our primary responsibility is for conservation, which we believe is best achieved through public ownership and public access. This will not preclude our agreement to some title transfer where natural values are not highly significant.
- (c) The Crown's present position on the Treaty and in relation to conservation lands has been stated by the Minister, but is under review. Iwi will have to judge for themselves the likelihood of the Government agreeing to large scale transfers of title. Our own position in advising the Minister will be guided by the primary responsibility for conservation and our belief that this can best be achieved through public ownership and public access.
- (d) The Minister's statement (as summarised in the Director-General's speech to the Waitangi Tribunal) also offers opportunities in relation to iwi involvement in conservation.
- (f) We have a lot to talk about right now, we both have a stake in land administered by DOC, and DOC has a responsibility under section 4 of the Conservation Act in relation to the Treaty.
- (g) We can share our skills to assist in Maori conservation skills development and where appropriate in the realisation of iwi aspirations in relation to development.
- (h): We can work on iwi involvement in management of conservation areas, focusing on the principles of access, use, guardianship, authority, identity and prestige and finding ways in which these can best be recognised and expressed.

8. Where Do We Go From Here

A number of points emerged from the discussions that begin to spell out a way forward in developing a partnership between the Department and iwi. These included:

- (a) We need to recognise that the last eighteen months to two years have set back what was good progress towards partnership because of the major focus on the settlement of Treaty claims. We need to ensure that further partnership development is not held up by a delay in claim settlements.
- (b) We need to spell out clearly the principles and criteria for claim settlement involving the conservation estate and the process for public involvement at key points.
- (c) We need to establish a dialogue with those Maori leaders who want a partnership in conservation, and we need to establish a group of Maori leaders either alongside the Minister or alongside the Department urgently.
- (d) We need to be honest about the problems that we have run into and what has slowed down development towards partnership.
- (e) We need renewed momentum and we need to address the costs involved in achieving renewed momentum.
- (f) We should reactivate or activate those steps identified as 'things we can do now' and extend that list to include more practical on the ground projects, resourcing of specific iwi projects, so that we can demonstrate the practical benefits of such partnership to both iwi and NGOs.
- (g) We need to examine and explore the other steps towards partnership that we identified as able to be taken with the help of others (the second and third categories).
- (h) On the things that we are able to do now we should develop a more sensitive approach (e.g. in our actions relating to land in dispute before the Tribunal).
- (i) We should be looking at alternatives to land transfer, and ways of funding iwi for roles in conservation.



Joris de Bres
Manager, Public Awareness